Hogan Lovells Global Payments Newsletter

March 2017

Hogan Lovells

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.

For our latest news and commentary on payments innovation, follow us on Twitter @HLPayments.	*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 publishes final draft RTS on Strong Customer Authentication: the EBA released the draft RTS mandated by PSD2 on 23 February 2017. Key changes from the previous draft include the banning of "screen scraping" and new exemptions to the requirement for strong customer authentication.

HM Treasury publishes draft AML Regulations and response to consultation: On 15 March 2017, HM Government published its findings from the consultation on the Fourth Anti-Money Laundering Directive. It has also published the draft AML regulations which contain a number of additions to the existing AML regulations.

EBA consults on guidelines for complaints of infringements of PSD2: the EBA published draft guidelines for competent authorities on the complaints procedures to be considered by PSPs to ensure compliance with PSD2 on 16 February 2017.

Regulatory Developments

Global

Europe: EBA publishes final draft RTS on Strong Customer Authentication

On 23 February 2017, the EBA released its final draft RTS specifying requirements on Strong Customer Authentication (**SCA**) mandated under PSD2. The publication of the draft RTS follows a consultation process which saw the EBA inundated with 224 responses raising 300 distinct issues and queries. In a speech outlining some of the solutions the EBA has adopted to address the competing objectives of PSD2, Andrea Enria, Chairman of the EBA, described the consultation as having been a "very difficult process".

The key changes from the first draft include:

- Technology-neutrality of the RTS. The previous RTS was criticised heavily for being high level in some areas, but too detailed in other areas. In particular, respondents to the consultation were critical of the references to specific technologies. The EBA has sought to rectify this problem by adopting a more technology neutral stance in its drafting.
- The practice of "screen scraping" is to be banned. The EBA has confirmed that the practice, which automates the copying of data from a website, will no longer be permitted under PSD2 from the end of the transition period because it will not meet the requirements for secure communication, identification and authentication.
- Two new exemptions to SCA. The first exemption to be introduced is based on "transaction risk analysis" which will be linked to pre-defined "reference" fraud rates. The EBA envisages this will provide incentives to PSPs to improve their customer protection. The second exemption is for "unattended terminals" for transport or parking fares. The RTS has confirmed that there will be no exemption for corporate payments and the threshold for applying SCA to remote transactions will increase from €10 to €30.

The final draft RTS will now be submitted to the European Commission for adoption, following which it will be subject to scrutiny by the European Parliament and the Council.

Under PSD2, the RTS will become applicable 18 months after its entry into force. This suggests it will become mandatory in November 2018 at the earliest. However, there are indications that the European Commission may amend or reject the EBA's final draft. If this happens, timing for application of the RTS could slip back as far as April 2019.

See the final draft RTS here.

See further information here.

See the speech here.

United Kingdom: HM Treasury publishes draft AML Regulations and response to consultation

On 15 September 2015, HM Treasury launched a consultation paper on the government's approach to the Fourth Money Laundering Directive (**AML4**). On 15 March 2017, HM Government published its findings from the consultation.

Important decisions arising from the consultation include:

- An extension of the fit and proper test to agents of money service businesses, which will be carried out by Her Majesty's Revenue and Customs (**HMRC**); and
- A decision to prevent pooled client accounts from being automatically subject to simplified due diligence. This will now be applied on a risk based approach.

HM Government has also published draft regulations which contain a number of additions to the existing Money Laundering Regulations 2007.

The changes include:

- An expansion of criminal offences and administrative sanctions;
- The extension of the regulations to all gambling providers;

- Revised limitations on the circumstances in which e-money issuers can be exempted from customer due diligence;
- A requirement that individuals who report suspicions of money laundering or terrorist financing activity are protected from adverse or discriminatory employment actions; and
- A requirement that supervisory authorities effectively monitor obliged entities. Greater clarity is provided in the regulations as to what is expected of supervisors in ensuring that obliged entities comply with the directive.

The deadline for additional comments on the draft regulations is 12 April 2017. The final MLR 2017 must be in force by 26 June 2017.

See the consultation response here.

See the draft regulations here.

United Kingdom: PSR consults on draft terms of reference (ToR) for review of payment system operators' (PSOs) role in preventing push payment scams

On 28 February 2017, the Payment Systems Regulator (**PSR**) published draft ToR outlining how it intends to consider the potential for PSOs to play a role in minimising the consumer harm caused by authorised push payment (**APP**) scams.

The PSR has stated that the proposed work has arisen out of a "super-complaint" submitted by Which? in September 2016, which raised concerns that there is not enough protection for people who are tricked into transferring money to a fraudster using an APP. The project covered by the ToR is one part of a proposed package of work that the PSR outlined in its response to the super-complaint in December 2016.

The PSR's stated aim for the project is to consider whether it would be effective and proportionate for operators of payment systems typically used for push payments to be more proactive in preventing or responding to APP scams.

The PSR intends to consider the UK's approach to APP scams compared to other countries and whether lessons can be learned from the experience of dealing with fraud and scam prevention in non-payment systems. If the PSR concludes that new measures are appropriate, it will then consider whether to introduce these by regulatory action or by an industry-led approach.

The consultation paper closes to responses on 21 March 2017. The PSR expects to publish its final ToR by the end of March 2017.

See the consultation paper here.

Europe: EBA consults on guidelines for complaints of infringements of PSD2

On 16 February 2017, the EBA launched a consultation on its draft guidelines on the complaints procedures to be taken into consideration by competent authorities to ensure effective compliance with PSD2.

The draft guidelines set out:

- Relevant information that competent authorities should provide when responding to complainants;
- Requirements relating to the channels that competent authorities should make available to complainants for submitting complaints of alleged infringements of PSD2;
- Requirements for competent authorities to perform an aggregate analysis of complaints of alleged infringements of PSD2; and
- Requirements for competent authorities to document their complaints procedure.

The deadline for comments on the consultation paper is 16 May 2017. The EBA will publish final guidelines after this date and these will apply from 13 January 2018.

See the consultation paper here.

United Kingdom: PSR receives first application under s.57 of Financial Services (Banking Reform) Act 2013

On 16 February 2017, the Payment Systems Regulator (**PSR**) published a press release stating that it has received its first application under section 57 of the Financial Services (Banking Reform) Act 2013, which gives the PSR the power to vary the terms of agreements relating to access to payment systems.

The application was made by a payment service provider (**PSP**) that asked the PSR to use its powers to vary the agreement it has with an indirect access provider (**IAP**). The IAP has decided to terminate its access agreement with the PSP and the PSP turned to the PSR to seek the extension of the deadline for termination of its indirect access to payment systems while it transitions to alternative access arrangements. The PSP has also requested that the PSR take urgent, interim action to ensure the maintenance of its indirect access service in the short term.

The PSR has decided to proceed to a detailed assessment of the application. It anticipates that it will take up to six months to make a final decision.

See the press release here.

Europe: EBA opinion on separation of payment card schemes and processing entities under Interchange Fee Regulation (IFR)

On 16 February 2017, the EBA published an opinion expressing dissent over some of the European Commission's proposed amendments to the draft RTS relating to the separation of payment card schemes and payment processing entities under the IFR.

In January 2017, the European Commission sent a letter to the EBA proposing six amendments to the RTS. These included a prohibition on card scheme and processing entities sharing staff for the purpose of innovation and a review of the rules regarding holding a directorship of both entities.

The EBA agreed to three of the Commission's proposals in a modified form but disagreed with three of the proposals. The EBA objected to the proposals on the grounds that "they appeared to assume that card schemes and processing entities are, or should be treated as if they were legally and structurally separated". Since the IFR does not require such separation, the EBA considered that some of the proposals may result in a disproportionate or difficult application of the RTS to payment card schemes and processing entities that are not legally separated.

The annex to the opinion sets out the EBA's amended draft RTS which incorporates the Commission's proposals that the EBA agreed with.

See the opinion here.

Europe: ESA consults on draft RTS on central contact point (CCP)

On 10 February 2017, the Joint Committee of the European Supervisory Authorities (**ESA**) launched a public consultation on draft RTS to assist Member States in determining when payment service providers (**PSPs**) and e-money issuers should appoint a CCP under Article 45(9) of the Fourth Money Laundering Directive (**MLD4**).

PSPs and e-money issuers with a head office in an EU member state can operate establishments like agents or distributors in other Member States. These establishments must comply with the anti-money laundering and counter terrorist financing regime of the member state in which they are based, even if they are not obliged entities themselves.

The draft RTS set out the criteria Member States will consider when deciding whether foreign PSPs and e-money issuers should appoint a CCP. The draft RTS also list the functions the CCP should perform.

There will be a public hearing on the consultation on 21 April 2017. The consultation closes for comments on 5 May 2017.

See the consultation paper here.

United Kingdom: PSR publishes annual access and governance report

On 9 March 2017, the Payment Systems Regulator (**PSR**) published its second annual report on access to payment systems and the governance of payment systems operators in the UK.

In the report, the PSR applauds the improvements in the provision of access since the publication of its first report in December 2015. The report also identifies areas where further improvements to ensure fair and open access could be made.

Among other things the report notes:

- As many as ten new providers could gain direct access to the interbank payment systems this year;
- The PSR expects operators to finish their work on developing access models and solutions that facilitate the development of aggregators by the end of 2017. It also expects operators to be ready to start on-boarding non-bank payment service providers (**PSPs**) if the Bank of England changes its settlement accounts policy and the necessary legislative changes are made.
- The PSR would like indirect access providers (**IAPs**) to reflect on the feedback about the impact and voluntary code of conduct they have developed. It also expects IAPs to address a set of quality-related issues affecting PSPs that opt for indirect access; and
- The PSR intends to review its existing directions later this year to reflect the changes caused by PSD2 and the potential consolidation of the operators of Bacs, the Faster Payment Scheme and Cheque and Credit.

The annex to the report provides an overview and a non-confidential section of the annual compliance reports that seven operators submitted to the PSR in October 2016.

See the report here.

See the annex here.

See the press release here.

Italy: Approval of draft law implementing MLD4

On 23 February 2017, the Italian Government approved, on a preliminary basis, a draft law implementing the Fourth Money Laundering Directive (**MLD4**) in Italy.

The draft AML law partially amends the consultation paper published by the Ministry of Economy and Finance (**MEF**). The main amendments concern:

- Late reporting of suspicious transactions. In line with discussions with the MEF during a roundtable held in January this year, the draft AML law introduces a timeframe of 30 days to report suspicious transactions. Beyond this time, the report will be considered late. The draft AML law also now includes a sanction for failure to report suspicious transactions and late reporting. The sanction would be based on a percentage of the amount of the transaction.
- Simplified Due Diligence (SDD). SDD may apply to e-money products where a number of specific conditions are met.
- Postponement of customer due diligence. The draft AML law extends the term to postpone the verification of the identity of the customer to 30 days (from 20 days) where the risk of money laundering or terrorist financing is low.

The draft AML law is now subject to the opinion of the Italian Parliament. After that, the final version must be approved by the Government and published in the Italian Official Gazette.

See the draft AML law here.

India: Draft guidelines on mobile wallets released for consultation

On 8 March 2017, the Ministry of Electronics and Information Technology issued the draft Information Technology (Security of Prepaid Payment Instruments) Rules 2017 for public consultation.

The draft rules mandate that digital wallets identify and authenticate every customer at the time of issuance and adopt a two factor authentication for transactions. The rules also require issuers of prepaid payment instruments (**PPIs**) to ensure end-to-end encryption of the data exchanged and to educate customers on the security measures the PPI issuer has put in place.

The consultation will close on 20 March 2017.

See the draft guidelines here.

Payment Market Developments

Global

Singapore: Central Bank completes digital currency pilot project

The Monetary Authority of Singapore (**MAS**) has successfully completed a trial to conduct blockchain interbank payments. The MAS collaborated with the R3 consortium and a number of banks including HSBC, JPMorgan and Bank of America to achieve its objective of creating a "digital representation of the Singapore dollar for interbank settlement".

An announcement from the MAS has confirmed that further tests are planned to establish new methods of conducting cross border payments using central bank currency. The MAS has also revealed that it is in the early stages of discussions to connect Singapore's payment systems with other countries.

See more information here.

United States: Trials begin for children's mobile payment service

Virtual Piggy has announced plans to test a mobile payments platform designed specifically for children. The platform will enable children aged 8 to 14 to make purchases from a mobile device, whilst allowing parents to monitor their spending by using personalised parental controls.

Children aged 17 and under are responsible for more than $830 billion in annual spending. The developers of the platform envisage the technology will prepare children for responsible financial management by allowing them to shop on their own.

See more information here.

Switzerland: Swiss canton crypto-currency awaiting approval

Developers have completed testing of a crypto-currency in Ticino, the southernmost canton of Switzerland. The circulation of ticinocoin (**TIC**) is designed to be limited to local services and products in Ticino. The TIC is expected to stimulate the local economy by offering less expensive and faster transactions.

The coin, which is awaiting approval from FINMA, is expected to have an exchange rate of 1:1 with the Swiss franc. It is not the first regional crypto-currency to be developed in Switzerland. In 2015 the Lémanic Arc canton introduced its own regional currency which now has over 100,000 units in circulation and in May 2016, the City Council of Zug began permitting bitcoin payments for municipal services.

See more information here.

Global: First international money transfer service using Facebook Messenger

TransferWise has launched a service that allows users to send money internationally through Facebook's Messenger app. Up until now, Facebook has only allowed users within the United States to send money domestically.

Facebook opened up its Messenger app to developers to create chatbots in April 2016 in a bid to expand its reach in customer service and enterprise transactions. The chatbot app will permit users to set up currency rate alerts and transfer money when the exchange rate is favourable to the user. It can also be used to make online purchases.

See more information here.

Europe: Air Bank and Diebold Nixdorf partner to pilot contactless ATMs

Air Bank and Diebold Nixdorf are collaborating to pilot a scheme that will allow consumers to make cash withdrawals from an ATM without the use of a traditional card reader or PIN pad.

The user authentication process will instead take place by the consumer tapping a near-field communication (**NFC**) enabled card and entering a

PIN on an encrypted touchscreen. It is hoped that the introduction of NFC-enabled machines will reduce the risk of card trapping or skimming attacks.

See more information here.

Africa: Mama Money expands its reach on the continent

The South African start-up, Mama Money, is expanding its money transfer service into Nigeria, Ghana and Tanzania. The service will also be available in Mozambique, Malawi and Kenya from April.

Mama Money started as an inexpensive money transfer service from South Africa to Zimbabwe. As it is licensed by the South African Reserve Bank, users do not need a bank account or ID documents to use the service. It is estimated that the company is now reaching six million mobile wallets and two million bank accounts.

See more information here.

United Kingdom: Visa innovation centre opens in London

Visa has opened the doors to its largest innovation centre to date in London. The 1,000+ square metre space will allow Visa staff to work side by side with financial institutions, merchants and start-ups to develop payment solutions.

The new centre follows the blueprint of a global network of innovation centres located in Berlin, Dubai, Miami, San Francisco, Singapore, Sao Paulo and Tel Aviv.

See more information here.

France: Account Information Service Bankin' offers wire transfer services

The French app Bankin', which provides account information services, is extending its services to wire transfers.

The transfer functionality is currently available on iPhone and Android for clients of Caisse d'Epargne, Société Générale, Crédit Mutuel, Boursorama and ING Direct and may be offered to clients of other banks by the end of March.

See more information here (in French).

Surveys and Reports

United Kingdom: Number of mobile transactions increases by 247% in the past year

An analysis of transaction data and a consumer survey conducted by Worldpay has revealed that 38 million contactless transactions were conducted using a mobile device in 2016. This figure represents 1.18% of all payments in UK stores.

The survey and analysis found that spending on all forms of contactless systems now accounts for 28% of all non-cash transactions in the UK. The report noted that the increase in transaction volume was largely attributable to consumers using their mobile devices to pay for lunchtime meals and drinks in bars

Consumers in London were responsible for 32% of all mobile payments. Contactless payments on mobile devices peaked in December, when consumers spent £51 million using a near-field communication (**NFC**) mobile phone.

See more information here.

United Kingdom: Payments UK publish report on the implications of Brexit for payments

The report highlights four key payments areas that Payments UK considers will be most affected by the agreement reached between the UK and the remaining EU member states. These are PSD2, passporting, SEPA and the UK's access to euro payment systems.

In particular, the report emphasised the need to schedule any required changes as a result of Brexit into long-term strategic planning and the necessity of retaining open communication between regulators and industry.

See the report here.

Global: Consumers perceive mobile wallet data to be secure

Research conducted by ACI Worldwide and Aite Group has revealed that 80% of consumers consider the personal and financial data in their mobile wallet to be "generally secure". In contrast, only 43% of consumers trust businesses to protect their financial data.

According to the study of 6,000 consumers in 20 countries, the top security concern for consumers was theft by computer hacking (32% in the US, 45% in Germany and 37% in Indonesia). As a result, the study noted that consumers were less concerned about protecting payments information in a mobile wallet than they were about protecting the same data stored on a computer.

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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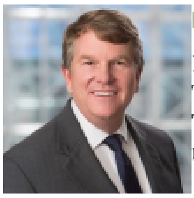

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