The revised Payment Services Directive (PSD2)

Financial Conduct Authority (FCA)

RPC rating: validated

Description of the measure

The measures set out in this assessment aim to extend the requirements of the payment services directive II (PSD2), an EU maximum harmonising directive. The FCA has proposed the following changes, not directly required in PSD2 and, therefore, qualifying regulatory provisions:

- **Complaints reporting** – Extending the requirement of reporting, to the FCA, on all complaints to payments institutions (PIs), e-money institutions (EMIs) and registered account information service providers (RAISPs). Requiring all institutions that are obligated to report on complaints to use a new reporting form: "The Payment Services Complaints Return".

- **Additional reporting to monitor compliance (EMIs, PIs and RAISPs)** – EMIs are already required to report on compliance in relation to their obligations under electronic money regulations (EMRs), the payment services regulation 2009 (and 2017) and the FCA's handbook rules. The proposed changes replace the existing returns for EMIs with one consolidated return containing only the most relevant elements, removing questions that are no longer needed and including new questions. The FCA also proposes to reduce the frequency of reporting from every 6 months to once a year.

- **Controllers and close links reporting** – Requiring authorised PIs to submit annual controllers report and an annual close links report. This extends, to authorised PIs, as already required of authorised EMIs and financial services and market act (FSMA) regulated firms. The FCA hope to gain a better understanding of who is controlling authorised PIs and whether any close links would impede the FCA from effective supervision of these firms.

- **Banking Conduct of Business Sourcebook (BCOBS)** – The FCA is proposing changes to BCOBS on the security of electronic payments, unauthorised transactions and misdirected payments. For the security of electronic payments, the FCA proposes adding a rule and clarifying its expectations. For unauthorised payments, the regulator proposes decreasing the maximum losses banking customers are liable for from £50 to £35. For misdirected payments (customers entering the wrong payment routing information when making a payment), the FCA proposes new rules requiring businesses to co-operate and provide information to consumers. In the case of misdirected payments, the rules aim to ensure customers can obtain information to help retrieve the funds when they could not be retrieved by the reasonable efforts of the provider.

- **Registration approach for small PIs and small EMIs** – Requesting additional information from prospective small PIs and small EMIs in registration and re-registration application forms. The additional information relates to new requirements under PSD2 including reporting requirements and complaints handling requirements.

Impacts of the measure

The assessment explains that the FCA expect approximately 1,821 businesses to be affected by the proposals contained within PSD2. It is expected that 1,552 payment service providers (these include banks, building societies PIs and EMIs), 200 businesses that operate under limited network exclusion, 10 businesses that operate under electronic communications network exclusions and 59 credit unions and deposit takers will be affected.

The main costs to business presented in the assessment are as follows…

- **Complaints reporting** – costs include amending management information, changing processes, and potentially changing systems and staff training. Based on a survey of businesses affected by the regulation, the regulator estimates total one-off costs to business (PIs, EMIs, banks and building societies) for 'Complaints reporting' at £14,826,007 and on-going costs at £8,981,743.

- **Additional reporting to monitor compliance (EMIs, PIs and RAISPs)** – costs include changes to processes, staff training, potential systems changes and staff time. Based on its survey, the FCA estimate total one-off costs to business at £4,228,927 and on-going costs at £2,678,126

- **Gap analysis and familiarisation costs** – The FCA expects that firms will need to assess to what extent their current practices align with the new requirements and conduct a review of the legal text. They estimate that 20 compliance staff at each large firm, 5 at each medium sized firm and 2 at each small firm will be required to familiarise themselves with the new proposal and conduct gap analysis. It also estimates that 4 legal staff at each large firm, 2 at each medium firm and 1 at each small firm will be required to read the legal text. On this basis, the FCA expects a total familiarisation cost of £1.2m for all elements of the proposal included in this assessment.

The remainder of the costs cover the following requirements

- **Controllers and close links reporting** – the FCA estimates total one-off costs to business (authorised PIs) of £3,710 and ongoing costs of £18,550. The FCA state that 371 businesses will be affected and the relatively small initial costs represent £10 per firm.

- **Banking Conduct of Business Sourcebook (BCOBS)** – For requirements concerning the security of electronic payments, unauthorised transactions and misdirected payments, the FCA estimates total one-off costs to business (credit unions and building societies) of £5,135 and ongoing costs of £71,243.

- **Re-registration approach for small PIs and small EMIs** – the FCA estimates one-off costs to business (small PIs and small EMIs) of £663,925.

The FCA, has set out clearly which elements of the proposal are qualifying (QRP) and non-qualifying (NQRP) regulatory provisions (under the EU directive exclusion of the business impact target (BIT)). The equivalent annual cost to business (EANDCB) only includes the impacts of qualifying regulatory provisions under the BIT framework, but the non-qualifying elements are clearly described. PSD2 is an EU maximum harmonising legislation and the FCA state 'there is limited discretion for member states (and competent authorities such as the FCA) to depart from or add to its provisions in areas within its scope[1]' (Page 4, Paragraph 1.8). The RPC can, therefore, confirm that all the proposals listed as NQRPs are non-qualifying under the EU directive exclusion of the BIT framework.

Quality of submission

Overall, the assessment is clear, concise and proportionately evidenced. The FCA has consulted industry, and provides a clear breakdown of the one-off and ongoing costs of compliance with each of the six qualifying provisions and how they affect both large and small firms within the sector. The regulator's assessment of the likely

[1] Implementation of the revised Payment Services Directive (PSD2): Approach Document and final Handbook changes

impacts is based largely upon feedback from affected businesses, gathered through the FCA's survey and consultation.

The FCA states that businesses would incur negligible costs as a result of changes to security requirements. It argues that:

(a) businesses that allow electronic payments are already likely to meet the requirements; and

(b) businesses which will allow electronic payments in the future, would have to develop security systems anyway and would, therefore, incur no additional cost as a result of the regulation.

The RPC considers this a reasonable and proportionate approach, but the assessment could have been improved had it provided industry support for the assumption that existing security systems already meet the new requirements.

The FCA outline rules which aim to ensure customers can obtain information to retrieve misdirected payments when they could not be recovered by the reasonable efforts of the provider. The assessment would have benefited from outlining what information the firm is now required to provide to the customer, and how this information will aid the customer in retrieving the misdirected payments. However, the RPC believes that the FCA have provided sufficient evidence that requests for this information are rare and, therefore, will not significantly affect the EANDCB.

When using labour costs to calculate one-off and ongoing costs of compliance the assessment would have been improved if the FCA had linked to the data sources for these wage rates and included non-wage benefits, as is standard practice. However, as the overwhelming majority of costs are well evidenced by industry estimates this does not affect the EANDCB significantly.

The regulator argues that the costs imposed by requiring notification from FSMA-authorised firms regarding account information is negligible as it affects a small number of firms and a requires a small amount of information. The regulator states that any cost imposed here is reflected in the gap analysis and familiarisation costs. The FCA also note that requiring credit institutions to keep records on the volume of account information services is not large enough to warrant an analysis of costs. During consultation with industry the FCA were informed that this information is already held by firms. The RPC believes that this is a reasonable and proportionate approach.

The FCA estimates gap analysis and familiarisation costs of £1.2 million based on assumptions about the numbers of staff required to read the documentation. The assessment could have been improved by testing these assumptions at consultation, as the regulator has done for other assumptions.

The analysis is concise, but some areas require an understanding of both the industry and existing regulatory landscape. The assessments could have been improved had the FCA presented its assessment in terms that are likely to be understood by the general reader.

Although not required, the assessment could have been improved had the FCA analysed the impacts on small and micro businesses and where appropriate considered possible mitigation.

Finally, though not required, the assessment would have benefited from a discussion of how the changes proposed could impact broader society. These could include benefits accrued by consumers through, for example, the ability to obtain information relating to misdirected payments or costs incurred by consumers through firms increasing the prices of their services to comply with the proposed measures.

Regulator assessment

Classification	Qualifying regulatory provision (IN)
Equivalent annual net direct cost to business (EANDCB)	£13.4 million
Business net present value	£-115.7 million

RPC assessment

Classification	Qualifying regulatory provision (IN)
EANDCB – RPC validated[2]	£13.4 million
Business Impact Target (BIT) Score[1]	To be confirmed

Regulatory Policy Committee

[2] For reporting purposes, the RPC validates EANDCB and BIT score figures to the nearest £100,000.