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Call for Input opportunity for PSD2 clarity

The UK's Financial Conduct Authority ('FCA') launched a Call for Input on its approach to the current payment services regime on 10 February, which seeks views on the existing guidance it provides to assist firms in complying with their legal requirements under the current payments regime.

The FCA is keen to ascertain whether its guidance has kept pace with developments in the payments industry and has expressed its intention to update its guidance to reflect the changes to be delivered as a result of the Revised Payments Services Directive ('PSD2'), which will be transposed into national law by HM Treasury by January 2018.

"I view the consultation as an opportunity for UK PSPs to call for greater clarity on which emerging technology-focused payments products will be considered subject to PSD2," said Angus McFadyen, Senior Associate at Pinsent Masons LLP. "EU policymakers found it challenging to devise important definitions in PSD2, so further guidance for companies in understanding what types of products and services will fall within the scope of PSD2 would be welcome."

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German plans for cash limits met with significant criticism

The German Finance Ministry outlined on 3 February a proposal to establish a threshold to limit cash transactions in the Eurozone, as well as to remove the €500 note from use, in a bid to counter terrorist financing and money laundering; the German government has suggested that Germany could implement the measures alone if a 'solution' for the Eurozone does not materialise.

According to the official press statement produced by the German Finance Ministry, the exact threshold for limiting cash transactions is not yet decided, but it could involve a ban on cash transactions over €5,000. Should the initiative be made law, transactions above the threshold would need to be settled via bank transfer. The proposal has already met with criticism from German MPs and media outlets, who have pointed out the implications such limits would have, *inter alia*, on privacy.

"People in Germany do not really see any advantage in limiting cash payments because they are not very frequent for higher transactions," says Lutz Auffenberg, Attorney at Law at Winheller. "Transactions of more than even €500 are usually settled by bank transfer. And for those few cases where people use cash for criminal activities, criminals will find a way to avoid using traceable payment methods anyway."

"Currently, bank notes are the only unlimited payment instrument, meaning that everyone has to accept bank notes for payment," explains Dr. Carsten Lösing, Partner at White & Case LLP. "There are concerns that limiting the use of cash might be the first step towards an abolishment of cash altogether. Furthermore, there is the fear that 'Big Brother' is trying to increase its monitoring of the people."

On 15 February European Central Bank ('ECB') President Mario Draghi announced to the European Parliament that the ECB is itself considering removing the €500 note from circulation, explaining that "The €500 note is being viewed increasingly as an instrument for illegal activities."

Despite the criticism, the move could go ahead in Germany. "The opposition and parts of [Coalition party] the CDU are sceptical about the initiative, but it seems that there is a majority for the measure in the German parliament, while consent of the second chamber is not required," says Lösing. However, Auffenberg believes that "the abolishment of cash transactions will not be put in place by the law but more by a change in the payment habits of the people."

UK Government extends scope of P2P lending regulatory regime

The UK Government published on 2 February the draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016 ('Draft Order'), which *inter alia* amends legislation around the regulation of activities relating to peer-to-peer ('P2P') lending.

"The Draft Order makes the provision of advice to lenders on entering into a P2P loan a regulated activity," explains Jonathan Segal, Partner at Fox Williams. "The Draft Order also extends the scope of the regulated activity of operating an electronic system in relation to lending, to ensure that all the relevant activities are included within this. This includes the activity of facilitating the transfer of rights under a P2P loan between lenders."

The Government has drafted these amendments as part of the introduction of the 'Innovate Finance ISA,' a new type of ISA that will become available in April and will enable the inclusion of loan-based crowdfunding investments within an ISA. "The Draft Order is a result of HMRC accepting that putting P2P loans within the ISA regime will lead to an increase in advice being given to consumers about which P2P loans they should invest in," says Sam Robinson, Partner at Nabarro.

The P2P regime changes come into effect from 6 April 2016, and so firms currently lacking permission to provide regulated advice on P2P agreements will need to apply for this permission. The Financial Conduct Authority is expected to publish final rules in March.