



**EMERGING PAYMENTS**  
— ASSOCIATION —

**AUGUST 2021**

# A PAYMENTS REGULATION ROAD MAP

**In partnership with**

**EVERSHEDS  
SUTHERLAND**

# Introduction to the EPA Regulation Roadmap



## Welcome

Welcome to the EPA's Regulatory Roadmap in partnership with EPA Patron and leading payments and Fintech law firm, Eversheds Sutherland.

The landscape for regulations that affect payments is changing fast. Keeping close to what is happening and what it all means is almost impossible. Even the best prepared firms in payments, whether regulated or unregulated, could miss out on new opportunities created by these changes –we know that the head of payments compliance is the CEO's best friend. And even the most compliant firms could fall foul of unexpected or unpredicted changes in regulations.

To make it easier for members of the Emerging Payments Association to navigate this evolving landscape, the EPA and Eversheds Sutherland are providing you with a resource that will keep you on track. Eversheds Sutherland, a EPA Community Patron, is our largest law firm partner and a key partner for us on Project Open Banking, Project Regulator and Project International Trade. They are also working with many of our members on high profile and strategic projects as well as working with other trade bodies such as UK Finance on the Future of Open Banking. In particular, they are working on some of the largest partnerships in the payments ecosystem, as well as compliance projects, technology deals and acquisitions and investment rounds. Our members have recently been having interesting conversations with them in relation to international expansion, new product development and ESG. Please contact Richard or Tony if you would like to find out more on how they could help.

The Payments Regulatory Roadmap is designed to give an overview of the areas of payments regulation that our members should be anticipating in the next two years, and to know the next steps and action required. And to help you prioritise what is of critical importance and what is less impactful.

## How to use the EPA Regulatory Roadmap

Use it to share what's happening in payments regulation with your team and across your company. Use it to plan your own activities to prepare for the changes coming down the line. And use it to know when to get involved with the EPA's policy work, responding to the stream of consultations coming from the regulators: we don't believe in leaving the future to chance, and by providing an intelligent perspective for these consultations, we can influence how payments regulation develops to our collective benefit.

## With thanks

Thank you to our Community Patron, Eversheds Sutherland, for providing this highly valuable resource as part of their contribution to the wellbeing of our community and our members. Because, like us, they believe that being armed with a future perspective on the future of payments regulation means that we are both forewarned and forearmed.

# What's on the horizon for the payments industry in the second half of 2021?

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Risk rating  
Potential impact







## Immediate impact

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Legal issue/risk	Links	Next steps/action required
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**The identification of TPPs (in the UK)**

ASPSPs in the UK now need to accept at least one other electronic form of ID issued by an independent third party (in addition to an eIDAS certificate). The additional ID must:

- be a digital certificate issued by an independent third party upon identification and verification of the PSP's identity
- be revoked as soon as the TPP is no longer authorised to conduct TPP activities
- include the name of the TPP, details of the national competent authority the TPP is authorised or registered with and the TPP's firm reference number

**FCA Policy Statement**

The FCA agreed to a transitional arrangement under which it would not look to enforce these new requirements up until 30 June 2021. This period has expired, therefore the following actions should have now been taken:

- TPPs should have put in place an alternative certificate
- ASPSPs should have selected which alternative certificate(s) they will accept and communicated this to TPPs
- ASPSPs should have changed their systems to accept their chosen alternative certificates (in addition to eIDAS certificates)



**FCA publishes guidance for treatment of vulnerable customers**

The FCA has issued its final guidance on the fair treatment of vulnerable customers across the market

**FCA Guidance**

PSPs need to put in place operational processes to ensure:

- vulnerable consumers are taken into account at all stages of the product and service design process
- all communications and information about products and services is understandable for vulnerable customers
- staff have the necessary skills to recognise and respond to a range of characteristics of vulnerability
- evaluation process are implemented to analyse cases which have not met the needs of vulnerable consumers



Legal issue/risk	Links	Next steps/action required
<p><b>“Dear CEO” letter for e-money institutions</b></p> <p>The FCA has issued a “Dear CEO” letter to the UK’s e-money businesses asking them to write to their customers to explain the difference between the services and protections offered by a traditional bank account and an e-money account</p>	<p><b>Dear CEO Letter</b></p>	<ul style="list-style-type: none"> <li>– Firms had six weeks from the date of the letter (18 May 2021) to write to their customers to explain how customers’ money is protected through safeguarding and that FSCS protection does not apply to e-money accounts</li> <li>– The communication should have been separate from any other messaging or promotional activity sent to customers</li> <li>– The FCA also expected firms to consider the appropriate method(s) of communication based on their business model and customer base, including any vulnerable customers</li> </ul>
<p><b>Changes to the Online Dispute Resolution Platform</b></p> <p>As a result of Brexit:</p> <ul style="list-style-type: none"> <li>– UK consumers and traders are no longer able to use the EU Online Dispute Resolution platform</li> <li>– UK traders are no longer required to provide consumers with a link to the EU Online Dispute Resolution platform</li> </ul>	<p><b>UK Legislation</b></p>	<p>UK traders should:</p> <ul style="list-style-type: none"> <li>– update their terms and conditions to remove any references to the EU Online Dispute Resolution Platform or to EU based Alternative Dispute Resolution entities</li> <li>– remove any such links or references from their websites</li> </ul>
<p><b>Changes to the amended Cross-border Payments Regulation (“CBPR2”)</b></p> <p>As a result of Brexit:</p> <ul style="list-style-type: none"> <li>– the existing requirements under article 3 of CBPR2 have been omitted from UK law</li> <li>– the transparency requirements in force under articles 3(a) and 3(b) CBPR2 have been retained under UK law</li> <li>– there has been a policy decision to omit the requirements to send an electronic message under articles 3(5) and (6) CBPR2</li> </ul>	<p><b>UK Legislation</b></p> <p><b>Explanatory Memo</b></p>	<ul style="list-style-type: none"> <li>– PSPs should continue to comply with the transparency requirements for card-based payments and credit transfers</li> <li>– PSPs are no longer subject to the equalisation rule which meant that charges for cross-border payments within the EEA had to be equivalent to charges for corresponding domestic payments in sterling</li> <li>– PSPs are no longer required to implement measures to send an electronic message which contain currency conversion charges</li> </ul>



Legal issue/risk	Links	Next steps/action required
<p><b>Application of SCA to e-commerce transactions in the UK</b></p> <ul style="list-style-type: none"> <li>The FCA will begin enforcement of the application of SCA to e-commerce transactions from 14 March 2022. Any non-compliance after 14 March 2022 will be subject to the FCA's full supervisory and enforcement action</li> </ul>	<p><b>FCA Website</b></p>	<ul style="list-style-type: none"> <li>Firms should actively engage in the various deadlines set out in UK Finance's roadmap to ensure they become SCA compliant by 14 March 2022, at the latest</li> </ul>
<p><b>FCA Consultation on changes to its Approach Document, Handbook and the SCA-RTS</b></p> <ul style="list-style-type: none"> <li>The FCA launched a consultation regarding changes to its Approach Document, Handbook and the SCA-RTS. Some of the key proposed changes included: <ul style="list-style-type: none"> <li>a new exemption so that ASPSPs do not need to require their customers to apply SCA every 90 days when the customer accesses their account through an AISP</li> <li>a new rule so that TPPs need to re-confirm customers' consent every 90 days if they intend to continue accessing data without the customer actively requesting the information (up to 4 times a day)</li> <li>a new rule which will see dedicated interfaces mandated for certain accounts offered to consumers and SMEs.</li> </ul> </li> </ul>	<p><b>FCA Consultation</b></p>	<ul style="list-style-type: none"> <li>The deadline for providing feedback on the proposed changes closed on 30 April 2021</li> <li>The FCA aims to publish feedback from the consultation and a Policy Statement in Autumn 2021</li> </ul>
<p><b>SCA Contactless Threshold Limits</b></p> <ul style="list-style-type: none"> <li>The FCA has confirmed that the thresholds for not applying SCA to contactless payments under Article 11 UK SCA-RTS will increase, so that more transactions can be exempt from the application of SCA</li> <li>The single threshold limit which applies to all transactions will be increased from £45 to £100</li> <li>The threshold limit for the cumulative amount of previous contactless electronic payments since the last application of SCA will be increased from £130 to £300</li> </ul>	<p><b>FCA Policy Statement</b></p>	<ul style="list-style-type: none"> <li>The FCA has increased the regulatory limits to enable the industry to make changes to the current contactless solution by setting higher maximum thresholds</li> <li>This does not translate into an immediate change for consumers and businesses</li> <li>Any increase to the contactless limit available to customers will be determined by the industry, up to a maximum of £100</li> <li>Individual card issuers will also be free to set their own cumulative limit up to £300</li> </ul>





Legal issue/risk	Links	Next steps/action required
<p><b>Call for Input on Open Finance</b></p> <ul style="list-style-type: none"> <li>– The FCA launched a Call for Input regarding the development of Open Finance in December 2019 but the FCA gave stakeholders until October 2020 to respond due to the coronavirus pandemic</li> <li>– The FCA has since published a Feedback Statement on 26 March 2021 following its Call for Input to explore the opportunities and risks arising from Open Finance and to inform the FCA’s regulatory strategy towards Open Finance</li> <li>– The FCA will now support the Government as it considers the legislation required on Open Finance. This will include sharing expertise from the open banking journey and supporting the government in relation to the development of any future legislation</li> <li>– The FCA also intends to play a role working with the industry to convene working groups relating to the development of common standards</li> </ul>	<p><b>FCA Call for Input</b></p> <p><b>FCA Feedback Statement</b></p>	<ul style="list-style-type: none"> <li>– Open Finance is an extension of Open Banking data sharing principles to enable third party providers to access customers’ data across a broader range of financial sectors and products</li> <li>– It will enable firms to extract and analyse more data to offer customers new services and products (e.g. broader product switching services and personal financial management dashboards)</li> <li>– Firms will also be able to use Open Finance to support their back office functions (e.g. the use of new data sets will help improve acceptance of credit, reduce paper and speed up on-boarding processes)</li> <li>– However, Open Finance does raise some challenges, including questions regarding data ethics, consumer protection and the implementation being a significant undertaking for firms</li> </ul>
<p><b>UK Finance reports on the future of Open Banking</b></p> <ul style="list-style-type: none"> <li>– In June 2020, UK Finance (in partnership with Accenture) published the Open Banking Future State as part of Phase 1 outlining a model and recommendations for the provision of Open Banking Services</li> <li>– At the request of the Competition Market Authority (CMA), UK Finance (in association with Baringa Partners LLP and Eversheds Sutherland) published a Phase 2 follow-up report (Open Banking Futures: Blueprint and Transition Plan) on 2 March 2021</li> </ul>	<p><b>Future of Open Banking (June 2020)</b></p> <p><b>Future of Open Banking (March 2021)</b></p>	<ul style="list-style-type: none"> <li>– The initial report stated that the final CMA Roadmap would see the Open Banking implementation phase complete and the need for the Open Banking implementation Entity (OBIE), and the functions it carries out in the wider banking system, to continue but evolve</li> <li>– The model proposed that the OBIE should transition to become a new industry open banking services company funded by the participants</li> <li>– The updated report expands on the initial proposals and focuses on the transition map for the “Future Entity”, and also provides details of the entity structure and capabilities and the corporate governance and funding plans for the newly created company</li> </ul>



Legal issue/risk	Links	Next steps/action required
<p><b>CMA Consultation on Future of Open Banking</b></p> <ul style="list-style-type: none"> <li>– The CMA ran a Consultation from 5 March to 29 March regarding the future of the OBIE</li> <li>– This followed the publication of UK Finance’s phase 2 report regarding the future of Open Banking (Open Banking Futures: Blueprint and Transition Plan)</li> <li>– The FCA has since published feedback received from a variety of respondents and intends to issue a final Policy Statement as soon as possible</li> </ul>	<p><b>CMA Consultation Feedback Statement</b></p>	<ul style="list-style-type: none"> <li>– A structure needs to be set up which ensures accountable leadership, sufficient resourcing, equitable funding and that all stakeholders are represented rather than any part of the ecosystem having too much influence</li> <li>– Separate monitoring is also being considered in order to ensure compliance with the regulatory standards</li> <li>– The market must now lead the development of open products and services and help competition flourish in a cost effective and agile way</li> </ul>
<p><b>The Payment Systems Regulator (PSR) Calls for Views on the future of CoP</b></p> <ul style="list-style-type: none"> <li>– The PSR published a Call for Views to gather feedback on the proposed implementation of Phase 2 of CoP across the payments industry</li> <li>– The deadline for responding to the consultation was 30 June 2021</li> <li>– The PSR expects that it will consult on next steps in August 2021 and publish a Policy Statement regarding Phase 2 of CoP in September/October</li> </ul>	<p><b>PSR’s Call for Views</b></p>	<p>The key proposals for Phase 2 of CoP which the PSR has sought feedback on are:</p> <ul style="list-style-type: none"> <li>– <u>Secondary Reference Data</u> – should CoP be offered for customer accounts that are not uniquely addressable by a sort code and account number, but instead rely on secondary reference data? These typically include collection accounts and can also include HOCA’s for credit cards, mortgages, savings accounts and loans</li> <li>– <u>CoP only Profile</u> – should PSPs with unique sort codes be able to join CoP through a dedicated ‘CoP-only’ role profile via Open Banking? Current participants must be a full member of Open Banking to be able to offer CoP. However, the implementation of a new CoP-only profile aims to reduce costs and timelines for joining CoP by giving more PSPs the technical capability to join without requiring full Open Banking membership</li> </ul>



## Legal issue/risk

### The Lending Standards Board (LSB) publishes report on effectiveness of CoP

The LSB has published a report following its review of the effectiveness of the implementation of the CRM Code and its impact on consumers and the industry.

## Links

**LSB Consultation**

**LSB Report**

## Next steps/action required

- The report details a number of recommendations, including changes to ensure that the CRM Code reflects the evolving nature and complexity of authorised push payment (APP) scams and to ensure that it is able to provide effective protection for consumers
- The LSB has begun work on a number of the recommendations and will be undertaking more activities in relation to the CRM Code during the course of 2021 (as detailed in the LSB's roadmap here)
- The LSB also intends to issue a specific Call for Input on some of the recommendations which will require further input from the industry in order to ensure that they are implemented effectively

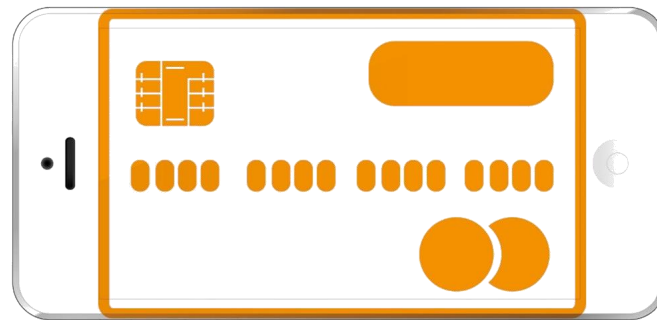




Legal issue/risk	Links	Next steps/action required
<p><b>PSR call for views – Authorised Push Payment (“APP”) scams</b></p> <ul style="list-style-type: none"> <li>– The PSR issued a call for views on APP scams from February to April 2021 following reported losses due to this type of scam of £208 million in the first half of 2020</li> <li>– The document sets out 3 possible regulatory measures for Faster Payments and Bacs Direct Credit payments systems to bolster the industry-led Contingent Reimbursement Model Code (the “<b>CRM Code</b>”), citing concerns that the CRM Code has not shown significant improvement on outcomes for customers or reduced APP scam losses to an acceptable level, by introducing: <ul style="list-style-type: none"> <li>– transparent, public reporting requirements for PSPs dealing with APP scam reimbursement, including <ul style="list-style-type: none"> <li>• amount repatriated</li> <li>• amount reimbursed</li> <li>• amount borne by customers</li> </ul> </li> <li>– mandatory reimbursements for certain victims of APP scams (who have otherwise acted appropriately), including charities, micro-enterprises and consumers</li> <li>– standardised transaction risk-rating matrices for PSPs, who are then required to share the information with any other PSP involved in the disputed transaction</li> </ul> </li> <li>– The PSR also highlights the need to consider the role that indirect PSPs play in interbank systems, given that they are not directly subject to scheme rules but may also facilitate APP scams, leaving customers with little or no recourse.</li> </ul>	<p><b>PSR Call for Views</b></p>	<ul style="list-style-type: none"> <li>– The call for views is wide ranging and it seeks feedback on issues such as the allocation of liability for reimbursement (i.e. between receiving PSP or sending PSP), and the full scope of PSPs (i.e. direct or indirect) to be captured by any changes the PSR deems necessary as a result of this piece of work. Indeed, the PSR has also queried whether it ought to use a direction or a rule change to pursue the measures and whether the Bacs payment system should be in scope</li> <li>– Signatories and non-signatories of the CRM Code and direct and indirect UK PSPs should take careful note of the responses to this call for views when they are released and any next steps published by the PSR in order to assess any impact it will have on their business and potential customer liability</li> </ul>
<p><b>The FCA’s safeguarding review</b></p> <ul style="list-style-type: none"> <li>– We expect that the FCA will continue its review into the effectiveness of the safeguarding measures across the market during the course of 2021</li> <li>– This follows the publication of the FCA’s “Dear CEO” letter in July 2020 asking institutions to attest that they were compliant with the safeguarding requirements of the EMRs and/or the PSRs</li> </ul>	<p><b>FCA’s Dear CEO Letter</b> <b>FCA Website</b></p>	<ul style="list-style-type: none"> <li>– PIs and EMIs should continue to review their end-to-end processes and take measures to follow the FCA’s action points set out in the “Dear CEO” letter</li> <li>– Firms may also need to undertake remediation work in respect of their existing measures (e.g. confirming accounts are designated for safeguarding and identifying whether any co-mingling arises and the time periods of such co-mingling)</li> </ul>



Legal issue/risk	Links	Next steps/action required
<p><b>Card acquiring market review</b></p> <ul style="list-style-type: none"> <li>— The PSR published its interim report in relation to its market review of the supply of card acquiring services</li> <li>— The report identifies three features of the market which restrict the ability and willingness of merchants to switch and 'secure a better deal':               <ul style="list-style-type: none"> <li>— the complexity, and resulting cost, of comparing prices offered by acquirers and independent sales organisations</li> <li>— the indefinite duration of merchant contracts for card acquiring services</li> <li>— the long initial terms and / or automatic renewal of acquirer and ISO point of sale terminal contracts</li> </ul> </li> </ul>	<p><b>Interim Report</b></p> <p><b>ES Website</b></p> <p><b>PSR Annual Report</b></p>	<ul style="list-style-type: none"> <li>— Since publishing the Interim Report, the PSR has reviewed written submissions from market participants and third parties, and held a programme of stakeholder engagement consisting of meetings and webinars to help shape its final conclusions.</li> <li>— According to its Annual Report for 2020/21, the PSR is currently finalising its findings and making progress with its remedy design. It plans to publish its final report and consult on proposed remedies in Q4 2021.</li> <li>— It will be important for stakeholders to continue to engage with the PSR once the final report is published, to challenge its findings where appropriate, and to help shape remedies, in particular to avoid unworkable remedies or unintended consequences.</li> <li>— It will be important for stakeholders to continue to engage with the PSR once the final report is published, to challenge its findings where appropriate, and to help shape remedies, in particular to avoid unworkable remedies or unintended consequences.</li> </ul>



## Legal issue/risk

## Links

## Next steps/action required

### Special Administration Regime comes into force following HM Treasury ("HMT") consultation on solvency changes for payment institutions and electronic money institutions

- HMT issued a response to its consultation in April 2021 citing the existing insolvency process for consumers of PIs and EMIs as "suboptimal", and draft legislation was posed to Parliament in quick succession
- *The Payment and Electronic Money Institution Insolvency Regulations 2021* ("Regulations") came into force on 8 July 2021 as a result of this consultation. The Regulations amend UK legislation to establish a bespoke insolvency procedure for PIs and EMIs, based on the Investment Bank Special Administration Regulations 2011. This Special Administration Regime ("SAR") will operate as an alternative to the liquidation or administration of those institutions and constitutes an Insolvency Event under Payment Services Regulations 2017 and the Electronic Money Regulations 2011
- The SAR is designed to address shortcomings of the existing insolvency regime. Special administrators appointed where a PI or EMI suffers insolvency are directed to three objectives:
  - ensure funds are quickly returned to customers and shortfalls in the amounts available are minimised
  - enable timely cooperation with UK authorities
  - rescue the institution as a going concern or wind it up in the best interests of the creditors
- Further, the FCA shall have the same rights in an SAR as it has for other regulated institutions in an administration process

### HM Treasury Response

- Subject to certain exclusions, the SAR applies to U.K. PIs and EMIs within the scope of the *Payment Services Regulations 2017* and the *Electronic Money Regulations 2011*, and has limited application to small PIs and small EMIs
- PIs and EMIs should continue to review their end-to-end processes, including safeguarding requirements and reviewing agreements with suppliers who facilitate their business models to ensure the terms align with the mechanics of the SAR, (for example, certain requirements must be met before a supplier's termination can be effective in an Insolvency Event)





Legal issue/risk	Links	Next steps/action required
<p><b>Revised Guidelines on major incident reporting under PSD2</b></p> <ul style="list-style-type: none"> <li>Following the EBA’s public Consultation proposing changes to the Guidelines on major incident reporting under PSD2, the revised Guidelines were published on 10 June 2021</li> <li>The amended Guidelines aim to improve and simplify the reporting process, capture additional relevant security incidents, reduce the number of operational incidents that will be reported and improve the meaningfulness of the incident reports received</li> <li>The new Guidelines will apply from 1 January 2022</li> </ul>	<p><b>EBA Consultation</b></p> <p><b>EBA Guidelines</b></p>	<ul style="list-style-type: none"> <li>The revised Guidelines have the potential to reduce the burden on PSPs as they introduce changes to some of the original classification criteria and introduce a new criterion for the breach of security of network or information systems</li> <li>The new criterion focuses on malicious actions that have compromised network or information systems related to the provision of payment services</li> <li>The EBA has also removed unnecessary steps from the reporting process, introduced greater timescales for submitting the final report and simplified the report to be submitted</li> <li>Overall, the EBA suggests that the changes are estimated to result in a reduction of reportable incidents by more than 10%</li> </ul>
<p><b>PSR call for views – Consumer protection in interbank payments</b></p> <ul style="list-style-type: none"> <li>Following from, and closely linked to, the <i>APP scams – call for views</i>, the PSR focussed another call for views in the same time period on the adequacy of consumer protections available in the Faster Payments Service, (i.e. the CRM Code and Direct Debit Guarantee)</li> <li>The PSR is interested in making an assessment of what is currently in place and understanding what participants think a beneficial and effective protection scheme would look like for those using the interbank payment systems, including regulatory steps they should take, what types of payments that should be covered, ways to identify high-risk payments and what a strategic protection scheme should look like</li> </ul>	<p><b>PSR Consumer protection in interbank payments: call for views</b></p>	<ul style="list-style-type: none"> <li>Interested parties and stakeholders should view the protections matrix the PSR provide in the report as a helpful guide to the issues and concerns the PSR is raising in this call for views and to raise awareness of the existing consumer protections available</li> <li>The PSR are hoping their next steps will be developed collaboratively between industry and consumer group representatives, and we expect they will release these in Q4 2021</li> </ul>



## Legal issue/risk

## Links

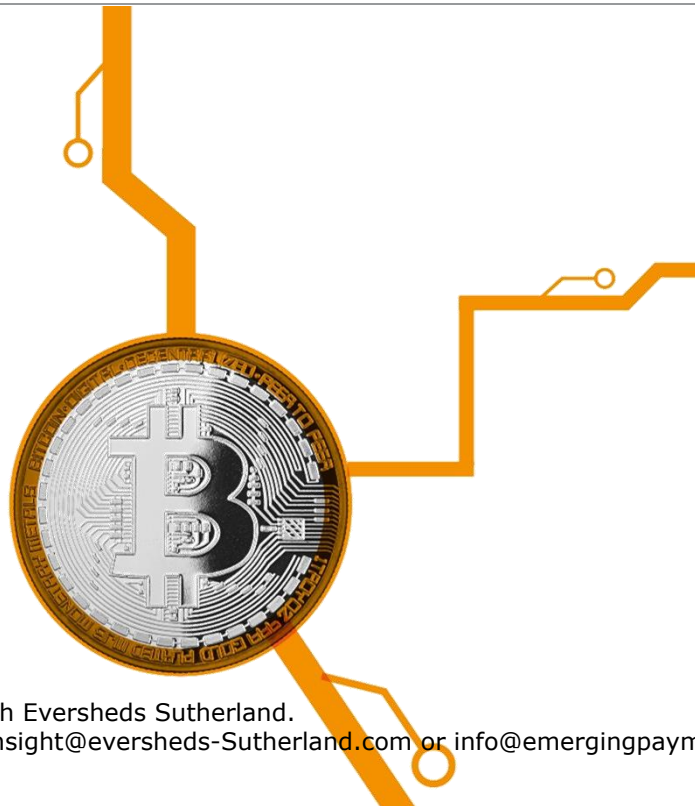
## Next steps/action required

### UK regulatory approach to cryptoassets and stablecoins: HMT Consultation and call for evidence

- Building on its July 2020 consultation, in January 2021 HMT proposed its vision for expanding the regulatory perimeter to establish a regulatory regime focussed on the cryptoasset market. This should cover retail stablecoins as a 'first stage' and cryptoassets more generally in the future. The consultation and call for evidence set out principles upon which a new regime shall rely, including:
  - authorisation, prudential (i.e. liquidity) and threshold requirements
  - safeguarding and insolvency requirements
  - other systems controls including risk management and AML standards
- HMT also called for evidence on the investment and wholesale uses for security tokens and DLT-based financial market infrastructures, seeking industry views on how regulations could be amended to best support them

### HMT Cryptoasset and Stablecoin consultation

- The consultation closed in March 2021 and responses are yet to be published by HMT
- The intention is for systemic stable token payment systems to be brought within the existing regulatory framework for payment systems and service providers. Key cryptoasset market participants such as issuers, operators, wallets and crypto exchanges are likely to be in scope and should consider the risks and opportunities which the new regime provides to their existing business models and markets
- If the proposals are progressed we would expect detailed requirements and standards for the industry to be legislated, rooted in the principle of '*same risk, same regulatory outcome*'



## Legal issue/risk

## Links

## Next steps/action required

### Bank of England ("BoE") Central bank digital currencies: Challenges, opportunities and design Discussion Paper

- In March 2021, the BoE set out its considerations on the impact CBDC issuance would have on the UK's monetary and financial stability
- The paper studies the different models available for issuance and distribution of a retail CBDC, including CBDCs issued directly by a central bank to retail customers, as well as hybrid models whereby central banks could outsource various functions including issuance and distribution and/or KYC to commercial banks or other PSPs
- While it does not confirm that BoE has made a decision to introduce a CBDC, the BoE does confirm that any such adoption would include a model which has both private sector and central bank involvement
- The BoE also announced that it had formed a CBDC Engagement Forum and a CBDC Technology Forum to gather strategic input on all aspects of a UK CBDC and engage closely with stakeholders on its challenges in designing and implementing it. The BoE has established an internal CBDC Unit working alongside these

### BoE Discussion Paper 'CBDCs: opportunities, challenges, and design'

- CBDCs are destined to have a significant impact on the existing payment ecosystem including e-money, stable coins, payment systems and card payment schemes, however they are unlikely to become systemic in the near future due a to lack of certainty surrounding their implementation
- It will be important for banks, other PSPs as well as data service providers, POS providers, and payments processors to continue to monitor the development of CBDCs to understand the threats and opportunities which they may provide to their existing business models and markets, including where they will be placed and how they will participate in the various CBDC ecosystems posed by the paper
- We would encourage stakeholders to engage in the ongoing consultations and various forums and platforms the UK authorities have established to ensure their diverse ranges of input are considered



## Legal issue/risk

## Links

## Next steps/action required

### BoE Discussion Paper on New forms of digital money

- BoE released a Discussion Paper in June 2021 developing its views on the regulation of emerging alternatives to traditional forms of money and the HMT Consultation Paper from January 2021 on the regulatory outlook for cryptoasset firms (and those firms who service them)
- Looking at systemic 'stable coins' (privately issued cryptoassets which peg their value to fiat currency) and central bank issued digital money (i.e. a CBDC), the paper sets out an illustrative example of the effects a steady demand for such digital money could have, and considers potential:
  - resulting responses from banks
  - impact on credit conditions
  - gaps in regulation where such new infrastructure could cut across current responsibilities of PSR, BoE, HMT, FCA and PRA, identifying the need to ensure that the regulatory approach is aligned and the division of responsibilities are clear
- Motivations for driving this discussion include the opportunity to contribute to faster, cheaper, and more efficient payments. However, the paper weighs these benefits up with the risk of financial exclusion if cash were to be decommissioned completely and BoE confirms (despite the steady decline in its use) cash remains a vital payment method in the UK
- BoE considers that with adequate regulation, including appropriate designation between the UK authorities and clear industry standards, inclusive of 'guarantee scheme' for consumers who suffer loss when using the coins (i.e. the kind of consumer protections currently available under the FSCS) for coinholders, certain forms of digital money will have an integral role going forward. It does hasten to add, however, that the UK authorities remain committed to the provision of cash as a payment type to those who need it, and confirms the BoE is neutral to the payment methods the market decides to use

### BoE Discussion Paper 'New forms of digital money'

- BoE is seeking interaction with a wide range of respondents on the regulatory landscape for new forms of digital money, and will be accepting feedback on this paper until **7 September 2021**
- Any regulatory regime proposed would cover firms issuing new forms of digital money and also firms providing services in relation to them. It will therefore be important for all payments services participants to monitor this development and understand the threats and opportunities which they may provide to their existing business models and markets



Legal issue/risk	Links	Next steps/action required
<p><b>HMT Consultation on access to cash in the UK</b></p> <ul style="list-style-type: none"> <li>— HMT issued a Consultation Paper following its October 2020 Call for Evidence seeking views on key considerations for the future of the UK's cash system</li> <li>— HMT published its summary of the responses to this Call for Evidence and Consultation Paper in July 2021 as the next step in devising legislation to guarantee cash access across the UK and ensure UK cash infrastructure is sustainable in the long-term</li> <li>— Work includes coordination across the UK authorities (HMT, FCA, PSR, BoE) in a Treasury-chaired Joint Authorities Cash Strategy Group</li> <li>— The key proposals are: <ul style="list-style-type: none"> <li>— installing proportionate geographic requirements for cash withdrawal and deposit facilities to be made available</li> <li>— provide HMT with powers to designate, in consultation with the FCA, certain firms being tasked with meeting these geographical requirements</li> <li>— making a single regulator, the FCA, responsible for ensuring the cash system benefits consumers and SMEs- however it highlights the importance for BoE and the PSR to maintain their initiatives and closely engage with the FCA in the furtherance of its responsibilities</li> </ul> </li> </ul>	<p><b>HMT Access to Cash Consultation</b></p>	<ul style="list-style-type: none"> <li>— This consultation will remain open until 23rd September 2021. The government is seeking views to inform it, so it can deliver the commitment made at Budget 2020 to bring forward legislation to protect access to cash</li> <li>— Participants should consider whether they wish to become more or less active in this space</li> <li>— Firms in the cash supply market should review their current arrangements alongside the government's list of factors it intends to take into consideration regarding designation of firms, including amongst other things: <ul style="list-style-type: none"> <li>— distribution of firms' consumers within the UK</li> <li>— share of the UK's payment account market</li> <li>— geographic coverage</li> </ul> </li> </ul>
<p><b>Access to cash – FCA and Payment Systems Regulator ("PSR") joint statement, and PSR second annual review of Special Direction ("SD8")</b></p> <ul style="list-style-type: none"> <li>— In May 2021 the FCA and PSR published a joint statement on their views in relation to the continued importance of access to cash and commitment to stakeholder engagement and joint research ventures to develop the future of cash arrangements in the UK</li> <li>— Within the statement, the FCA highlighted its September 2020 guidance to firms who were considering branch closures and the need to address their customers' banking needs before they did so. In January 2021 the FCA asked banks to pause closures where they were unable to meet the expectations in the guidance</li> <li>— In furtherance of the above, the PSR produced its second annual review on SD8 (a Specific Direction issued by the PSR to the LINK network to safeguard the ongoing availability of access to free-to-use ATMs for UK consumers) and has expressed its intent to continue the aims of SD8 beyond its expiry early next year</li> </ul>	<p><b>Access to cash – FCA and PSR joint statement PSR second annual review of SD8</b></p>	<ul style="list-style-type: none"> <li>— SD8 expires in January 2022, and PSR are minded to consult on a new draft Specific Direction in late 2021 which will include how it sees the LINK Network interacting with future access to cash legislation and other industry developments</li> <li>— These documents and the new Direction will be of particular interest to ATM operators, consumer groups and merchants, as well as anyone with an interest in providing access to cash. Participants should be monitoring HMT, FCA and PSR publications to ensure understanding of the UK authorities' expectations for key actors in this space</li> </ul>





Legal issue/risk	Links	Next steps/action required
<p><b>HMT's payment landscape review</b></p> <ul style="list-style-type: none"> <li>— HMT published a Call for Evidence to review the UK payments landscape in summer 2020. HMT's response to the consultation is imminently awaited; it will publish a summary of the responses it received and set out next steps for the review</li> <li>— As part of this consultation, HMT identified several key drivers of change in the payments landscape. These include: <ul style="list-style-type: none"> <li>— the introduction of a liability regime for Faster Payments</li> <li>— the enhancement of Open Banking, a review of the regulatory perimeter for institutions such as payment gateway providers and e-money institutions</li> <li>— innovation to improve the ability to receive faster, cheaper, more transparent and inclusive cross-border payment services;</li> <li>— the implementation of cryptoassets, stablecoins and central bank digital currencies (which it has addressed in a separate consultation and call for evidence – see above)</li> <li>— the continued development of the New Payments Architecture (“NPA”) including oversight of establishing ISO20022 as a common payment messaging standard. this particular project is currently being led by Pay.UK and the BoE in collaboration</li> </ul> </li> </ul>	<p><b>HM Treasury Call for Evidence</b></p> <p><b>HM Treasury's Payments Landscape Review: Call for Evidence – Eversheds Sutherland</b></p> <p><b>Collaboration between Pay.UK and the Bank of England on ISO 20022 payment messages</b></p>	<ul style="list-style-type: none"> <li>— As a result of the increasing digitisation and rapid innovation in the payments and wider financial markets, there will now be significant focus on the UK regulatory approach to the payments landscape</li> <li>— It will, therefore, be important for all participants in the payments space to monitor the development of the government's plans and to understand the threats and opportunities which they may provide to their existing business models and markets</li> </ul>



## Legal issue/risk

## Links

## Next steps/action required

### Consultation on delivery and regulation of the NPA

- The PSR published a Consultation Paper in February 2021 to review the risks in, and implementation of, the UK's interbank payments systems renewal, the NPA
- The PSR flagged its concerns with the procurement process Pay.UK initiated for a provider to build the NPA, citing concerns over unacceptably high risks including:
  - diminished competition and innovation where the central infrastructure service provider chosen gains a dominant position within the NPA ecosystem
  - the broad scope of services (both Faster Payments and Bacs transactions) being upgraded simultaneously causing mass-disruption to the UK's core payments systems
- In conjunction with the above, this Consultation Paper sought industry views on 3 possible ways forward for Pay.UK:
  - Pay.UK should continue with the current competitive procurement
  - start a new competitive procurement
  - or directly negotiate with the incumbent provider (Vocalink) without a competitive procurement

### Consultation on delivery and regulation of the New Payments Architecture

- The consultation period closed in Q2 2021 and the PSR aims to provide its initial response in Q3 2021 and a final decision in Q4 2021, along with any appropriate legal instruments



Legal issue/risk	Links	Next steps/action required
<p><b>The PSR's proposed strategy</b></p> <ul style="list-style-type: none"> <li>— The PSR issued its first-ever strategy document in June 2021, setting out 4 high-level priorities which flow into 4 strategic outcomes that it wants to help bring about over the next 5 years, namely: <ul style="list-style-type: none"> <li>— preventing financial exclusion by ensuring access to, and availability of, the payment services which users rely on</li> <li>— driving consumer protection campaigns and payment systems governance oversight to ensure users are sufficiently protected when using payments systems</li> <li>— promoting innovation and future payment methods by, amongst other things, using PSR's oversight of Pay.UK's work with a central infrastructure services provider to deliver the NPA</li> <li>— continuing the promotion of digital retail payments and monitoring 'share of supply' of firms in each payment system to support competition across all levels of the payment chains</li> </ul> </li> </ul> <p>The PSR is seeking views from stakeholders in this open consultation and aiming to publish the final version of their strategy before the end of 2021</p>	<p><b>PSR Proposed Strategy</b></p>	<ul style="list-style-type: none"> <li>— The engagement is currently in process and the PSR is open to consider its stakeholders' views on its proposed strategy. The formal public consultation will run until <b>10 September 2021</b></li> <li>— In the meantime, the PSR will continue to engage with the industry informally and draw on feedback it has through 'virtual' roadshows and on social media</li> <li>— It will be important for stakeholders to engage with the PSR, to challenge its findings where appropriate, and to help shape its final conclusions and remedies, in particular to avoid unworkable remedies or unintended consequences</li> </ul>
<p><b>PSR consultation paper on proposed amendments to the Interchange Fee Regulation (IFR) guidance: EU Withdrawal consequential changes.</b></p> <ul style="list-style-type: none"> <li>— Another important objective for the PSR in 2021 will be publishing consultation responses on its IFR Guidance amendment which it posed as a result of Brexit and closed in May 2021.</li> <li>— The PSR has overseen the 'onshoring' into domestic UK legislation of provisions of the EU IFR 2015 which, among other things, introduced caps on interchange fees for certain card transactions.</li> <li>— The PSR has now proposed a small number of amendments to the IFR Guidance to reflect the changes to the regulatory framework and the newly established UK IFR</li> </ul>	<p><b>Interchange Fee Regulation (IFR) Guidance: EU withdrawal consequential changes</b></p>	<ul style="list-style-type: none"> <li>— Card scheme operators subject to the UK IFR, parties contracting with card schemes and/or third-party processing entities, issuers, acquirers and merchants that accept card payments should be aware of the changes posed by the PSR and consider any business impacts relevant to them</li> </ul>



Legal issue/risk	Links	Next steps/action required
<p><b>European Commission adopts draft Delegated Regulation with RTS on framework for home-host cooperation and information exchange</b></p> <p>The European Commission has adopted a draft Delegated Regulation under PSD2 in relation to regulatory technical standards (RTS) specifying the framework for cooperation and the exchange of information between competent authorities of the home and the host member states.</p>	<p><b>Delegated Regulation</b></p>	<ul style="list-style-type: none"> <li>– The Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union</li> </ul>
<p><b>Buy Now, Pay Later</b></p> <p>The Financial Conduct Authority (FCA) has published a report by its former interim chief executive, Christopher Woolard CBE, which sets out how regulation can better support a healthy market for unsecured consumer credit, taking into account the impact of the coronavirus (COVID-19) pandemic, changing business models and new developments in unregulated buy-now-pay-later (BNPL) unsecured lending. In response to Woolard’s recommendation, the government has announced its intention to legislate to bring currently unregulated, interest-free BNPL into the scope of FCA regulation. We are currently waiting for the joint FCA and Treasury proposals to be published. A formal consultation process will be undertaken in respect of these plans to take into account the views of consumers, providers and retailers in order to understand the impacts that this regulation could have.</p>	<p><b>Woolard Review</b></p>	<ul style="list-style-type: none"> <li>– Under these plans, providers will be subject to FCA rules so will need to undertake affordability checks before lending and ensure customers are treated fairly, particularly those who are vulnerable or struggling with repayments. Borrowers will also be able to complain to the Financial Ombudsman Service. Firms operating these products should begin to prepare now for these developments and ensure that they engage with the consultation when it commences.</li> </ul>
<p><b>Interest Waivers</b></p> <p>The FCA’s Payment Deferral Guidance for consumer credit in the context of the coronavirus pandemic, other than the high-cost short-term credit guidance, expires on 31 July 2021, but certain provisions of it, including with respect to the interest waiver under that guidance, remain in force beyond that date to enable firms to deal with customers at the end of payment deferrals that end shortly before that date.</p>	<p><b>FCA Guidance</b></p>	<ul style="list-style-type: none"> <li>– Firms should check the status of their plans with customers and act accordingly to ensure that at the end of the payment deferral period the customer is treated fairly and if necessary further tailored support is given to them (which may include further payment deferrals).</li> </ul>



## Legal issue/risk

## Links

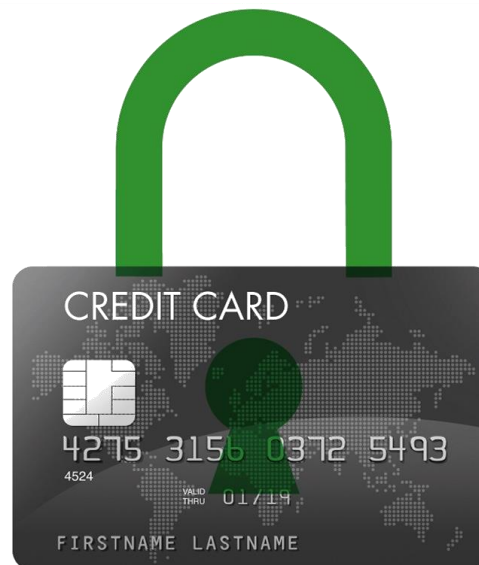
## Next steps/action required

### Consultation on the Eurosystem oversight framework

The ECB launched a public consultation on a proposed new draft oversight framework for electronic payment instruments, payment schemes and payment arrangements ("**PISA framework**") which closed on 31 December 2020

### ECB Consultation

- The consultation primarily targets organisations having oversight responsibility for payment firms and recommends a longer and more prescriptive set of principles than the harmonised oversight framework
- Based on current proposals, it is also likely to impact a wide range of firms providing payment and e-money services across Europe, regardless of whether these services constitute the firms' main business(es)
- Firms should read the Framework documentation carefully to ascertain its impact on their current business models and regulatory compliance functions
- We await publication of the ECB's final version of the PISA framework, which will come into effect one year after its publication





Legal issue/risk	Links	Next steps/action required
<p><b>European Commission retail payments strategy</b></p> <ul style="list-style-type: none"> <li>– The European Commission published its retail payments strategy for Europe in September 2020 which reflects the responses to its 2020 consultation, including ambitious plans building on already announced measures and new specific actions and timeframes for delivery</li> <li>– As part of the strategy, the European Commission will focus on a number of initiatives during the course of 2021, including: <ul style="list-style-type: none"> <li>– a comprehensive review of the application and impact of PSD2</li> <li>– a review of whether it is appropriate to propose legislation requiring PSPs to adhere to the requirements of the SEPA Instant Credit Transfer</li> <li>– implementation of the ECB’s measures to ensure that there is full interoperability between clearing and settlement mechanisms, including non-European payment systems</li> <li>– a review of the acceptance and availability of cash within the euro area</li> <li>– the full uptake of instant payments in the EU by the end of 2021</li> </ul> </li> </ul> <p>Despite the aims of the Eurosystem’s retail payments strategy not directly addressing CBDCs, they are closely linked to and aligned with the work currently being progressed by the European Central Bank on a digital euro</p>	<p><b>EU Retail Strategy</b></p>	<ul style="list-style-type: none"> <li>– The European Commission’s strategy includes some significant plans for 2021, including a review of both the application and impact of PSD2. It will, therefore, be important for all firms in the payments space to monitor the development of these initiatives throughout the upcoming year</li> <li>– Building on the digital finance measures previously announced, the European Commission intends to launch a study in 2022 on the acceptance levels of digital payments in the EU with a view to ascertaining and addressing reasons for low levels of acceptance</li> </ul>
<p><b>Diversity and Inclusion</b></p> <p>In line with the FCA’s objective to build on its Public Sector Equality Duty (PSED), a joint Discussion Paper has been issued with the PRA on setting the FCA’s expectations of Diversity and Inclusion in regulated firms and the role of regulators. The FCA states that diversity and inclusion are critical to their work on culture and governance, particularly for boards and senior management and will also impact their existing work on the treatment of consumers, including vulnerability and the proposed new Consumer Duty.</p>	<p><b>FCA Discussion Paper</b></p>	<ul style="list-style-type: none"> <li>– The FCA are asking for comments on this Discussion Paper by 30 September 2021.</li> </ul>



Legal issue/risk	Links	Next steps/action required
<p><b>Dealing with customers in financial difficulty</b></p> <p>The FCA plans to publish a consultation paper at the end of 2021 or in early 2022 setting out proposed changes to the FCA Handbook as part of its review of how to provide appropriate, ongoing support to borrowers in financial difficulty as the coronavirus crisis moves from being short-term and virus-driven to longer term and driven by the broad macroeconomic impact.</p>	<p><b>FCA Website</b></p>	<p>– Firms should look out for further guidance on this issue from the FCA later this year or early next year.</p>
<p><b>Allocation of Payments in Credit Card accounts</b></p> <ul style="list-style-type: none"> <li>– The FCA have noted that customers are increasingly looking to repay credit borrowed under store cards or credit cards by way of fixed term instalment plans where these are available to them.</li> <li>– Lenders have in the past had to apply to the FCA for a waiver to the provisions of the Consumer Credit Sourcebook (CONC) at CONC 6.7.4 because this provision instructs lenders to apply any repayments received from a customer first to the debt that attracts the most interest. This has been impeding the lender’s ability to accept repayments in relation to the instalment plans as naturally the higher interest debt is that of the credit or store card rather than the instalment plan.</li> <li>– The FCA recognise that a change is required to facilitate the use of such plans and has indicated that it will amend the wording of CONC 6.7.4 accordingly to allow for them.</li> <li>– Instalment plans will only be allowed where firms have concluded “acting reasonably” that it is in the customer’s best interests to enter into such a plan. The FCA will also require that firms take reasonable steps to ensure that the customer is put in a position to make an informed decision regarding the exercise by the customer of a decision to enter into an instalment plan option.</li> <li>– The consultation period for this is two months after which the FCA will then consider its next steps.</li> </ul>	<p><b>FCA Consultation</b></p>	<p>– Firms should note the proposed changes and be prepared should they wish to offer credit card or store card customers such options.</p>



# The EPA's Approach to Policy



Our policy work reflects the areas most relevant to our broad membership base, giving members the opportunity to contribute their expertise and share their views and influence better outcomes for the industry.

Inspired by our community values – we are open, dynamic, inclusive, influential, sustainable and collaborative – we aim to shape policy developments in the UK and other jurisdictions through our external (strategic Projects and tactical Sprints) and internal policies, applying a consistent, transparent and democratic process with the highest level of governance and best practice of project management.

## Our external policies

In 2021, the Advisory Board has selected five areas of main interest which represent our core ongoing Strategic Projects:

- Project Regulator
- Project Open Banking
- Project Inclusion
- Project Financial Crime
- Project International Trad

Furthermore, we are working on Tactical Sprints, shorter projects, each with a specific target. At present, we are exploring the feasibility of two new Sprints:

New Era GBP, which will result in the publication of a Green Paper by the end of 2021

Sprint TPA, a review of the New Payments Architecture, with recommendations for an alternative approach to creating a world class Core Infrastructure

The EPA is also constantly monitoring the emerging new structuring of the payments architecture and the debate around the future of money and its inevitable progressive digitalisation, beyond e-money, from CBDCs to stablecoins, in light of the significant steps that the Bank of England and HM Treasury are doing to enable the creation of a well-regulated and safe crypto space in the United Kingdom.

## Our internal policies

The EPA Board of Directors in consultation with the Advisory Board periodically reviews our internal policies that regulate all aspects of the EPA internal and external stakeholders management and our talents acquisition process. We firmly believe in the shared values of our modern society, such as diversity, equality, sustainability, openness and transparency and we make sure that these principles guide us when decisions are taken.

## Keeping in tune with developments

The ever-evolving payments landscape gives rise to a constant flow of regulatory development to keep pace with technological innovations and digital transformation. We are developing a forward look of regulations being considered so that our members are aware of, and can contribute to, relevant consultations and planned regulations.

EPA Regulation Road Map, in partnership with Eversheds Sutherland.

For more information, please contact [LegalInsight@eversheds-Sutherland.com](mailto:LegalInsight@eversheds-Sutherland.com) or [info@emergingpayments.org](mailto:info@emergingpayments.org)

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## **About the EPA**

The Emerging Payments Association (EPA), established in 2008, sets out to make payments work for everyone. To achieve this, it runs a comprehensive programme of activities for members with guidance from an independent Advisory Board of 15 payments CEOs.

These activities include a programme of digital and (when possible) face-to-face events including an online annual conference and broadcast awards dinner, numerous briefings and webinars, CEO Round Tables, and networking and training activities. The EPA also runs six stakeholder working groups.

More than 100 volunteers collaborate on the important challenges facing our industry today, such as financial inclusion, recovering from COVID-19, financial crime, regulation, access to banking and promoting the UK globally. The EPA also produces research papers and reports to shed light on the big issues of the day and works closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

The EPA has over 130 members that employ over 300,000 staff and process more than £7tn annually. Its members come from across the payments value chain including payments schemes, banks and issuers, merchant acquirers, PSPs, retailers, TPPs and more. These companies have come together to join our community, collaborate, and speak with a unified voice.

The EPA collaborates with its licensees at EPA EU and EPA Asia to create an interconnected global network of people passionate about making payments work for all.