

Andrea Enria speech on PSD2 at
Westminster Forum

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Speech by Andrea Enria, Chairperson of the EBA

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Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

I am honored to have been invited to share my thoughts with you on the future of payments policy. As you would probably expect, my contribution to today's event will provide a European context to the most important payment policy issues at the center of current discussions. I will focus on the revised Payment Services Directive (PSD2), which is a major 'game changer' for any national payments market in Europe.

Some of you may wonder, however, why this particular EU Directive should matter to the UK payments market in particular, given that the UK Government will soon be triggering Article 50 of the Lisbon Treaty and initiate the process for the UK to leave the European Union.

However, I can think of at least four reasons why the Directive and the main policy choices made at the EU level remain relevant for the UK irrespective of the trajectory of the wider development of the UK's exit.

- The first reason is of a rather legal nature, which is that the UK, its national authorities and financial institutions remain legally bound by the provisions of the Directive, from its application date of 13 January 2018 until the exit from the EU; this remains true for the PSD2 itself and for the Technical Standards and Guidelines the EBA is developing in support of the Directive.
 - The second reason is more of a policy nature, in that some of the key objectives of the PSD2 - to increase competition and to facilitate innovation in the payments market - are arguably shared with, and indeed very close to the heart of, UK authorities. This is
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evidenced by the UK Government's 'Open Banking Initiative' as well as the public consultation it launched earlier this month on the transposition of the PSD2 into national law.

- Thirdly, the EBA is currently developing 11 Technical Standards and Guidelines under the PSD2 jointly with its 28 national regulatory authorities across the EU. In the case of the UK, this is primarily the Financial Conduct Authority, which has provided very significant input to the development of these requirements. I have therefore little reason to believe that the UK authorities will drastically change their policy approach at the moment the UK exits the European Union.
- The fourth reason is a business-related one: while the details of the separation of the UK from the EU are anything but certain at this early stage, it is also true that the UK is home to over a third of the payment and electronic money institutions in the EU, and that many of these businesses will probably wish to continue carrying out business with the EU in some form once the UK has withdrawn. It is therefore of little surprise to me that the EBA has received dozens of responses to its consultation papers from UK businesses, UK trade associations and UK consumer associations, and these responses have shaped the EBA's final requirements.

I therefore hope that you will indulge me while I convey my views about the current policy debate. I thought I would do so by:

- reminding you of the objectives of PSD, and the challenges the EBA faces;
- providing you with an update on the progress of the mandates the EBA is developing in support of the PSD2;
- and concluding with an in-depth look at what has arguably been the most controversial of the 11 mandates: the Technical Standards on strong customer authentication and common and secure communication (SCA&CSC).

Objectives of PSD (1 and 2)

Those of you who have been working long enough in the payments industry will probably remember the transposition of the first Payment Services Directive (PSD1) in 2007. While PSD1 had arguably a few structural deficiencies and also lacked some important detail in specific areas, it did succeed in introducing a first wave of competition into the payments market across the EU.

It did so by opening up national payment systems that had been controlled by traditional banks to new, non-bank competitors. New entrants were no longer required to use the payment 'rails' provided by banks to provide basic services but could themselves participate in payment systems, in their own right.

Following the transposition of the Directive, more than 2,000 payment and electronic money institutions received authorisation across the EU. The resultant competition this brought about contributed significantly to a reduction in the costs of payment transactions in the EU.

The revised Payment Services Directive (PSD2), which came into force on 13 January 2016 and that will apply on 13 January 2018, has set even more ambitious targets for the level of competition in this area. The European Commission, Parliament and Council sought to open the payment markets even further, by introducing two new types of services: payment initiation services and account information services.

I believe I do not have to explain in much detail to this particular audience what these two types of services are about. Suffice to say that, by adding these services to the PSD2, the European lawmakers have decided to allow non-bank competitors to access the payment accounts of banks' customers, for the purpose of retrieving account information and/or to initiate a payment transaction. There are little precedents as to how something like this could and should be made to work in law and in regulatory practice, which further illustrates the level of ambition of the Directive.

But not only that. The lawmakers took another unprecedented step, in that they introduced, for the first time, security requirements into EU law. When all the dust of the negotiations had settled, a Directive therefore emerged that pursued a wide array of objectives:

- enhancing competition through the new payment initiation and account information services;
- strengthening the security of payment transactions, and of the operations of payment services providers more generally;
- promoting customer convenience;
- ensuring technology and business-model neutrality;
- contributing to the integration of European payment markets;
- protecting consumers; and
- facilitating innovation, in both, the payment services themselves, as well as the security measures taken to protect the transactions.

This is quite a long list, which raises several implementation challenges as several objectives are potentially conflicting and competing with each other. In other words, fully achieving one may come at the cost of reducing the level of ambition on one or several of the others.

The EBA mandates in support of the PSD2

In order to support achieving these objectives, the lawmakers left it for the EBA to develop detailed requirements in a number of crucial areas. There are a total of 11 mandates that have been conferred on the EBA:

- six Technical Standards, which once adopted by the EU Commission are directly applicable EU law that do not require any national transposition or implementation, and
- five Guidelines, which attain their legally binding effect at the moment the national competent authority implements them into their national regulatory and/or supervisory framework,

The EBA has already published Consultation Papers on more than half of these mandates:

- the Technical Standards on passporting notifications;
- the Guidelines on professional indemnity insurance for third-party providers;
- the Guidelines on authorisations of payment institutions;
- the Guidelines on incident reporting, which apply to both payment institutions and credit institutions, and the consultation period of which is open for another three weeks;
- the Guidelines on complaints procedures of national authorities, which was published just last week; and
- the Technical Standards on strong customer authentication and common and secure communication, which the EBA developed in close cooperation with the European Central Bank and is arguably the most controversial of the mandates.

During the remainder of the year, you can expect consultation papers on the remaining EBA mandates:

- the Guidelines on operational and security risks for payment services providers;
- the Technical Standards on the Central Contact Points;
- the Technical and Implementing Standards on the EBA Register for payment institutions and;
- the Technical Standards on the coordination between home and host authorities.

In the process of developing nearly all of these mandates, the EBA had to make difficult trade-offs between the competing objectives of the PSD2. This has been quite a challenge, but in none of the mandates has this been more evident than in the Technical Standards on strong customer authentication and common and secure communication. So allow me to conclude my speech by summarising what we have done for these particular standards, what respondents have told us, and which changes to the version that we consulted on we will be making. As we plan to publish these final draft Technical Standards tomorrow, I will be able to share with you some details of the solutions we have chosen after a very difficult consultation process.

The Technical Standards on SCA & CSC

The PSD2 has given the EBA only 12 months to develop these technical standards. This in itself was a challenge, because these standards will specify the authentication and communication requirements between incumbent banks and the new entrants to the market. They are therefore key to achieve the objectives of PSD2. The challenge was further exacerbated because we found the Directive to be less clear than we had hoped in respect of the scope and precision of the mandate.

For that reason, and despite the short time available, we decided to publish, in December 2015, an early Discussion Paper at the outset of the process. The paper set out the EBA's understanding of PSD2 and our early views on the mandate. The EBA received 118 responses, which provided

useful input for the subsequent publication, in August 2016, of a Consultation Paper (CP) with detailed proposals for the Technical Standards.

Throughout 2016, a very lively debate started and the EBA staff took a proactive stance in presenting the preliminary views reflected in the paper, in order to ensure that as many stakeholders as possible would respond to the public consultation. We received 224 responses, which does not only represent the highest number the EBA has ever received to any of its consultations, but has also provided the EBA with an unprecedented wide, and therefore representative, view of all stakeholders.

The EBA identified 300 distinct concerns and clarification requests by respondents. Each of these concerns will be listed in a 100-page feedback table that we will publish as part of the final draft Standards, including the EBA's assessment of which changes, if any, were made to the text as a result.

In a number of areas the respondents' comments focused on provisions of the PSD2 which were considered to be unclear but were not about the EBA's mandate. Unfortunately, the EBA could not respond to clarification requests on provisions outside its mandate. However, a large number of comments and suggestions were specifically focused on issues raised in the draft Technical Standards, and several of them were also taken on board and have resulted in the EBA changing its approach and/or clarifying the wording and intent of the Technical Standards.

For example, the EBA agreed with some of the proposals made by respondents and will remove references to ISO 27001 and other specific, technological characteristics, to ensure technology-neutrality and allow for future innovations.

Furthermore, with regards to the exemptions to the principle of strong customer authentication, the EBA will introduce two new exemptions, one based on "transaction risk analysis" and the other for payments at so-called "unattended terminals" for transport or parking fares. The exemption on transaction risk analysis will be linked to predefined levels of fraud rates, so as to provide incentives to strengthen the protection of customers. A review clause 18 months after the application date of the RTS has been introduced, to ensure that the calibration of the exemption is sufficiently conservative.

The EBA also agreed with a number of respondents to modify or extend existing exemptions, for instance increasing from EUR 10 to EUR 30 the threshold for remote payment transactions. However, we disagreed with a number of comments that suggested adding further exemptions, such as on corporate payments.

We have also reflected on a number of respondents expressing confusion and concern with regards to the communication between account servicing payment service providers (ASPSPs), account information service providers (AISPs) and payment initiation service providers (PISPs). Having assessed these comments, we have decided to maintain the obligation for the ASPSPs to offer at least one interface for AISPs and PISPs to access payment account information. Having informally consulted with the European Commission on the interpretation of the Directive, the

EBA has come to the conclusion that the current practice of third party access without identification that a few respondents referred to as ‘screen scraping’, or mistakenly as ‘direct access’, will no longer be allowed once the transition period under the PSD2 has elapsed and the RTS applies.

However, in order to address the concerns raised by some respondents on the smooth and continued access to the dedicated interface, a requirement has been added in the draft RTS requiring banks to provide the same level of availability and performance as the interface offered to, and used by, their own customers, as well as to provide the same level of contingency measures in case of unplanned unavailability.

The RTS on strong customer authentication and common and secure communication provides an interesting and challenging example of the difficult balance that we had to find between different objectives of enhanced security, enhanced competition between incumbent banks and new entrants, customer convenience and innovation. I am convinced that the extensive public consultation and dialogue with stakeholders, on this and other regulatory products in the area of payment services, has allowed improving the quality of our work. I hope that the EBA can continue to count on your responses to the remaining consultation papers that we will publish throughout 2017.

Thank you very much for your attention.