

Single Rulebook Q&A

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Topic	Other topics
Article	33
Paragraph	6
Subparagraph	c
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	EBA/GL/2018/07 - Guidelines on the exemption from the contingency mechanism under Regulation (EU) 2018/389
Article/Paragraph	Guideline 7: Wide usage of the interface
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Disclose name of institution / entity	Yes
Name of institution / submitter	HSBC
Country of incorporation / residence	United Kingdom
Type of submitter	Credit institution
Subject matter	Wide usage portability between Member States
Question	<p>Could three months' data, showing wide usage of the dedicated interface, produced in one Member State by a regulated entity (ASPSP) belonging to an ASPSP Group, be used as evidence to support the 'widely used' condition in a further Member State for a separate regulated entity (ASPSP) belonging to the same ASPSP Group, on the condition that both entities employ the same dedicated interface?</p>
Background on the question	<p>ASPSPs in a corporate group may wish to use the same dedicated interface (designed as a single group solution) across multiple entities and different Member States. Group solutions are often implemented first in the Group's Home State prior to being extended into other Member States. As a result ASPSP Groups may have a live PSD2 dedicated interface, operational and widely used in their home state but not in other Member States which are their secondary markets. To facilitate an exemption application in the</p>

secondary market it would seem appropriate to permit the ASPSP in the secondary market to rely on the wide usage data provided in the exemption application in the Group's primary market. Article 33(6) sets out the conditions which must be satisfied in order for the competent authority to determine that the dedicated interface falls within the exemption from the obligation to set up the contingency mechanism. Article 33(6)(c) states that the dedicated interface have been "widely used for at least three months by payment service providers to offer account information services, payment initiation services and to provide confirmation on the availability of funds for card-based payments." The EBA Guidelines on the conditions to benefit from an exemption from the contingency mechanism includes guidance on the meaning of "wide usage" in Guideline 7. This Guideline refers to "the ASPSP" making the application and does not refer to evidence of wide usage being obtained by an ASPSP within the same corporate group which may be using the same interface. However, Guideline 9 (in particular Guideline 9.4) indicates that the EBA anticipates that relevant NCAs will co-operate when dealing with applications from ASPSPs which are part of the same group, using the same dedicated interface. In addition in the summary of response to the consultation on the Guidelines, at pg.110, ref. 157 the EBA states that "the 'widely used' condition is not limited to the territory of one Member State and could be considered at EU level if the CA considered it appropriate." Whilst the response does not state that different ASPSPs within the same corporate group can use the same data this would be a natural extension where the same dedicated interface is being used by ASPSPs in different Member States. We note that a single dedicated interface is defined by commonality of technical characteristics, regardless of the API initiative standard employed. This is because ASPSP Groups may wish to deliver the same dedicated interface using different API initiative standards in different Member States, in order to promote in-market interoperability and adoption and achieve better customer outcomes.

Final answer

Article 33(6) of the [Commission Delegated Regulation \(EU\) 2018/389](#) provides that competent authorities (CAs), 'after consulting EBA', shall exempt an Account Servicing Payment Service Provider (ASPSP) that has opted for the dedicated interface from the requirement to implement the fall back mechanism, if the interface meets the four conditions in Article 33(6) of the Delegated Regulation. One of these conditions is for the interface to have been widely used for at least three months by account information service providers (AISPs), payment initiation service providers (PISPs) and card-based payment instrument issuers (CBPIIs).

The [EBA Guidelines on the conditions to benefit from an exemption from the contingency mechanism under Article 33\(6\) of Regulation \(EU\) 2018/389](#) (EBA/GL/2018/07) provide additional clarity regarding the conditions that need to be met. Guidelines 7.1 and 7.2 clarify that CAs should consider a number of criteria in assessing the 'wide usage' condition, including the number of AISPs, PISPs and CBPIIs that have used the interface for offering

services to their customers during the 3 months period referred to in Article 33(6)(c) of the Delegated Regulation, the number of successful requests sent by these third party providers (TPPs) via the dedicated interface during that period, evidence that the ASPSP has made all reasonable efforts to ensure wide usage of the interface, as well as the evidence submitted regarding the results of the testing and the resolution of issues reported by TPPs. The Guidelines also clarify that NCAs may also take into account other factors in assessing whether this condition is met, such as the number of TPPs available in their jurisdiction to use the interface.

Where an ASPSP is part of a group with subsidiaries in different Member States, each subsidiary needs to apply, as a separate legal entity, for an exemption to the CA in the Member State where its head-office is located (where it has been authorised. The CA needs to consider whether the subsidiary meets the four conditions specified under Article 33(6) of the Delegated Regulation based on the evidence submitted by the subsidiary.

That being said, where the same interface is being used by different subsidiaries in different Member States, the CA should, as stated in Guideline 9.4 of the EBA Guidelines, inform the other CAs, if it considers that the interface does not meet the requirements for an exemption. This aims to limit potential discrepancies in the assessment of the interface through communication between CAs. This does not mean that a CA is obliged to consider the condition of wide usage as met solely based on evidence provided by other subsidiaries in other markets.

However, the CA may, in a range of cases, use the evidence provided by an ASPSP relating to data obtained for the same interface in other Member States when considering whether the condition of wide usage has been met. Accordingly, in the event that an interface has not been used in a Member State, for instance due to the absence of TPPs in the respective Member State or due to the limited customer base of that ASPSP, the CA may take into account the usage of the same interface in other Member States when deciding whether or not the ASPSP meets the wide usage condition.

Link

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