

Introductory statement of the
Chairperson of the European Banking
Authority (EBA), Committee on Economic
and Monetary Affairs (ECON) of the
European Parliament

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Introductory statement by Andrea Enria, Chairperson of the EBA

Brussels, 29 November 2016

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

Honourable Chair and Members of this Committee,

Following our appearance before you on March 22nd of this year, we would like to express our thanks to you for giving the EBA another opportunity to update you on our work in delivering the 11 mandates conferred on the EBA in the revised Payment Services Directive (PSD2).

These 11 mandates conferred on the EBA are very welcome, as they allow the Authority to fulfill its statutory objective of contributing to regulatory convergence in retail payments across the EU.

The EBA also very much supports the objectives of the PSD2, to introduce greater competition and innovation in the market for retail payments; to enhance security; to allow for consumer-friendly solutions; and to create an EU-wide market for payment services.

We have so far published Consultation Papers on four of these mandates and are expecting to have issued an additional two such papers by February next year. However, there is considerable

uncertainty as to whether we are able to maintain this speed until the transposition date of the PSD2 on 13 January 2018, given that the EBA has been allocated no additional resources to develop the PSD2 mandates.

During the development of our mandates, we have had to accept that the different objectives of the PSD2 give rise to competing demands. In the particular case of the mandate that is the focus of our discussion today– the Regulatory Technical Standards on strong customer authentication and common and secure communication -- this required the EBA and the ECB, with whom we are developing this mandate, to make difficult trade-offs between these competing demands.

For example, the objective of facilitating innovation would suggest that the EBA should develop a Technical Standard with security requirements that stay at a rather high level, so as to allow for different industry standards and solutions to be developed. By contrast, the objective of further enhancing the single EU market in payments suggests the exact opposite, namely for the RTS to be very detailed, in order to avoid a situation whereby many different industry standards will evolve that might all be compliant with the RTS of the EBA, but that will differ between banks, possibly even along geographical borders.

Similarly, the demand for customer convenience and user friendliness suggests that the RTS should be devised such that the intrusion into the payment transaction is minimised. By contrast, the demand for enhanced security within a future payments environment with account access through, not only payment users but also third part providers, suggests frequent authentication.

The challenges for the EBA and the ECB, who is fulfilling this mandate in close cooperation with us, are therefore formidable. Allow me therefore

- to explain briefly the way in which the EBA has gone about meeting these challenges;
- address some of the concerns that have been raised in a letter that MEPs Ferber and Tajani have sent to me on October 24th on behalf of the Parliament’s negotiating team on PSD2 and that we published on our website; and
- conclude with an outlook of the remaining steps ahead of us.

The way the EBA has been developing these RTS

These RTS are a key component through which the PSD2 aims to achieve its objectives of enhancing competition, facilitating innovation, and contributing to secure payments in the EU.

This is because the RTS will define how market challengers (such as account information and payment initiation service providers) will be communicating and authenticating themselves with market incumbents (i.e. banks) for the purpose of accessing payment accounts.

The PSD2 has given the EBA only 12 months to develop this important mandate.

Given the complexity and importance of this particular mandate, it was evident that we would benefit from input into our thinking at an early stage of the development process. Notwithstanding the tight timeframe, we, therefore, decided to issue first a Discussion Paper to expose some of our early thinking.

We received 118 very helpful responses to the Discussion Paper, from incumbents, market challengers, and other interested parties. We assessed these responses; invited selected third party providers and banks to follow-up meetings with us to clarify some of the points they had made; and used all of this input to develop the subsequent Consultation Paper, which we published in August 2016.

In parallel, the EBA has presented its thinking at over 20 different conferences throughout the EU, in order to promote the Consultation Paper and encourage even the smallest start-up firm, third party provider, technology provider, and bank to provide input and, thereby, help the EBA develop RTS that achieve the appropriate trade-off between the competing objectives of the PSD2.

These efforts of ours have been successful, as by the end of the consultation period in mid-October, the EBA had received a total of 226 responses, which fill more than 2,000 pages in total; represent a new record for an EBA consultation; confirm the importance of these RTS; and include a dozen or so responses from third-party providers.

Throughout October and November, we have been assessing these responses and have so far identified approximately 260 distinct concerns and/or requests for clarifications. We will assess the strength of the argument of every single one of these concerns, with a view to decide whether or not we made the right trade-offs in the CP.

At this final step, we will again be very transparent: when publishing and submitting the final RTS to the EU Commission at the beginning of next year, we will publish what will be a very extensive 'feedback table', in which we will provide our feedback to the responses we have received.

In that table, we will be summarising each of the 260 concerns and requests raised, and make transparent our assessment of whether or not the comments have led us to amend the RTS.

We also have to recognise, however, that a large number of those 260 requests relate, not to the RTS, but the PSD2 itself and how to interpret its provisions. It is not for the EBA to take a view on these issues and we are, therefore, currently discussing with the Commission how best to communicate such clarifications.

I hope that the above convincingly explains that the EBA is not developing this mandate in isolation but that we receive frequent and detailed input from all market participants that are affected by the RTS; that we use an approach that is methodologically robust; and that we have been, and will continue to be, transparent throughout this development process.

Allow me now to elaborate on three of the 260 concerns, which have been raised by several respondents also in the letter by MEPs Ferber and Tajani have raised in their letter to me last month. These concerns relate to the monetary thresholds that we have proposed in the Consultation Paper; the communication interface and what the letter refers to as “direct access”; and the exemptions to strong customer authentication (SCA).

Concern No. 1: Monetary thresholds

With regard to the monetary thresholds for exemptions to SCA, the first concern relates to the maximum amount of 10 Euro for remote payments, which in the view of some would cover only a very small part of transactions; would deviate from the threshold for contactless payments; would be difficult to implement; and may not have taken into account the impact on consumers and firms.

By way of response, allow me to explain that the thresholds for remote payments and contactless payments were set at different levels due to a higher risk of fraud in the former. At the same time, however, we acknowledge the competing need to allow for the development of user-friendly and innovative means of payment.

We are in the process of assessing the comments received on this point to assess whether we found the right trade-off between security and customer convenience, and will seriously consider whether we need to make changes to these thresholds.

Concern No. 2: The interface and so-called “direct access”

Another concern raised relates to the interface that the account information and payment initiation service providers will be required to use under the RTS for accessing the payment accounts of a bank. We understand that a request is being formulated that the EBA RTS should ensure that:

- PISPs and AISPs can use at all times what is referred to as “direct access” via a bank’s customer-facing interface;
- PISPs and AISPs can rely on authentication procedures carried out by the ASPSP; and
- Banks fulfil their obligations under Articles 66(4) and 67(3) of PSD2 in respect of non-discrimination and sharing of information.

By way of responding to the first of these suggestions, we should remind ourselves of the precise wording of the EBA’s mandate under Article 98(1)(d), and from which the EBA cannot deviate: according to the mandate, the EBA shall specify “the requirements for common and secure open standards of communication for the purpose of identification, authentication, notification, and information, as well as for the implementation of security measures”.

The mandate therefore does not appear to support what you would like to see specified in the RTS: neither the PSD2 nor the mandate specify the nature of the access or that it should be what

your letter refers to as “direct access”. Recital 32 has a reference, which suggests that banks should give a choice to TPPs with regards to how they access accounts, but this recital does not establish the right for TPPs to access accounts in a particular way, including via the so-called “direct access”.

Furthermore, neither the recitals nor the Articles define “direct access” or clarify that ‘screen scraping’ is to be a variant thereof. Given the lack of definition, it is, therefore, unclear what “direct access” would mean, even if the EBA’s mandate for the RTS was able to require such access.

The draft RTS that we have proposed, therefore, remain as silent about the concept of direct or indirect access as the Directive itself. Instead, Article 19 of the RTS requires that "Account servicing payment service providers that are offering to a payer a payment account that is accessible online shall offer at least one communication interface".

The Article in the draft RTS does not prescribe whether this access for third parties should be through the same interface as the customers' interface or whether it should be a 'dedicated' interface, i.e. a specific interface created for the purpose of third parties accessing the account and its information. The RTS stay again as silent as the PSD2 itself on this. We would be interested in hearing the views of the Members of the Parliament on this particular point.

With regard to the second suggestion – that the RTS should specify that PISPs and AISPs can rely on authentication procedures carried out by the ASPSP – the RTS deliberately do not include such a provision. This is because Article 97(5) of PSD2 already provides this requirement.

It would be inappropriate for a Technical Standard of the EBA to repeat what is already provided in Level-1 text. In this respect, the EBA follows principle 12 of the ‘Joint Practical Guide’ that is agreed between EU Council, EU Parliament and EU Commission, which states that an Act “shall not include provisions [...] which repeat [...or...] re-state [...] legal provisions that are already in force”.

Concern No. 3: Exemptions to SCA

The final concern that has been raised relates to the exemptions that the EBA has been mandated to develop, i.e. the instances in which payment service providers are not required to apply SCA. Some concerns have been expressed that suggest that the RTS is inconsistent with the Level-1 text because the exemptions are seen to be too narrowly defined and do not allow for what the letter refers to as “risk-based analysis”.

We will have a close look at these concerns but do not yet fully understand the reasoning behind this view. This is because the mandate in Article 97(1) PSD2 provides that “Member States shall ensure that a payment service provider applies strong customer authentication where the payer (a) accesses its payment account online; (b) initiates an electronic payment transaction; and (c) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses”.

The starting point of the Directive therefore is that SCA applies, whereas the exemptions contemplated in Article 98(1)(b) are, by their nature, supposed to be exceptional in character. Such exemptions cannot go as far as carving out from SCA application a range of transactions through risk analysis so wide that, in practice, the rule is turned into the exception, and vice versa.

More importantly, however, the proposed RTS do not refer to risk-based analysis at all, and, therefore, do not prohibit such an approach. On the contrary, we would encourage payment services providers to continue developing such analyses as an additional measure to reduce fraud.

However, it is currently difficult for us to envisage an RTS that would allow risk-based analysis to replace strong authentication, as some of these concerns seem to suggest. Rather, RBA is a security requirement complementary to SCA, with SCA having been introduced by PSD2 for the very specific purpose of authentication prior to the transaction being initiated. The legislators deemed this requirement to be necessary given the new future environment that will be created by PSD2, whereby payments are initiated no longer by the payment user only but also by AIS and PIS providers.

Outlook and next steps

I hope this helped to explain our work and how and why we have arrived at the substance that is proposed in the Consultation Paper on the three specific points that you raised in your letter. We would welcome any feedback that you may have so we can feed this input into our ongoing work before we finalise the RTS.

As I said before, we are currently assessing the three concerns I have presented today, as well as 257 other distinct points that we have received, and are working hard with competent authorities, the ECB and the Commission to find solutions. We are confident that we will be able to find suitable compromises between the various objectives of the PSD2.

In terms of timing, we are anticipating to remain on track to submit the RTS at the beginning of 2017. However, due to the large number of responses that we have to assess with limited resources, it is likely that we will submit the RTS a month or so later than the deadline of 13 January 2017 stipulated in the PSD2.

Given that the PSD2 provides that the RTS apply only 18 months after entry into force anyway, we believe that such a delay is acceptable to ensure that the RTS are fit for purpose, support the objectives of the PSD2 and ensure that the EBA delivers its mandate.

Thank you for your attention