



Public hearing on the amendment of the RTS on SCA&CSC with respect to the 90-days exemption for account access

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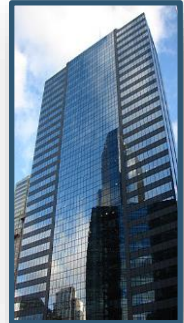
Virtual Public Hearing, 11 November 2021

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Introduction to the EBA

- Independent member-based authority, accountable to the EU Parliament and EU Council;
- Having the objective of contributing to the single EU market for retail payments;
- Has different legal instruments at EBA's disposal, including Technical Standards, Guidelines, Opinions;
- PSD2 conferred 12 mandates on the EBA, which have already been delivered with additional clarifications provided through EBA Opinions and the EBA Q&A tool;
- Has as its highest governing body the EBA Board of Supervisors, comprising the Heads of the 27 national supervisory authorities.



Purpose of public hearings

The EBA organises ‘public hearings’ for its Technical Standards and Guidelines to allow interested parties to ask clarification questions.

- An EBA public hearing takes place during the consultation period, usually around half-way through the consultation period.
- The purpose of the hearing is for the EBA to present a summary of the Consultation Paper (CP), reproduce the questions of the CP, and ask attendees whether they require additional explanations or clarifications from the EBA so as to be able to answer the questions in the CP.
- The public hearing does therefore not replace written responses to the CP, as it is only through written responses that the EBA is able to give the views of stakeholders the required consideration.



Background: The SCA exemption for account information services



- The Payment Services Directive (PSD2) requires payment service providers (PSPs) to apply SCA each time the customer accesses its payment account online.
- When developing the RTS in 2016, the EBA introduced an exemption from this requirement, allowing PSPs not to apply SCA for each account access if the customer accesses limited payment account information. In such case, SCA must still be applied for the first access and at least every 90 days after that.
- The aim of this exemption was to ensure that the application of SCA for each account access does not undermine the business viability of account information services (AIS) that the PSD2 has sought to promote as an innovative service in the EU.
- In line with the legal advice received at the time of developing the RTS, and in consideration of the fact that the ASPSP is liable under the PSD2 for protecting the security of the customer's data and funds, the EBA conceived this exemption, as well as all other exemptions to SCA in the RTS, to be of a voluntary nature. This means that the ASPSP is allowed, but not obliged to apply the exemption.

Issue identified by the EBA

- The advice to conceive exemptions to be voluntary has worked well for all of the exemptions the EBA developed in fulfilment of its RTS mandate. However, with regard to this particular exemption for account access, the voluntary nature has led to very divergent practices, with some ASPSPs requesting SCA every 90-days, others at shorter time intervals, whilst a third group of ASPSPs have not applied the exemption at all and request SCA for every account access.
- The inconsistent application of the exemption and/or the frequent application of SCA have in turn led to friction in the customer journey when using AIS, and to a negative impact on the services offered by account information service providers (AISPs).
- In particular, the application of SCA for each account access limits AIS use cases that rely on the AISP's possibility of accessing the account without the customer being present, and the PSU's ability to use such services.
- This also makes the use of AIS cumbersome for customers where the AISP aggregates multiple accounts held by the customer with different account providers, as the customer has to go through multiple SCAs, one with account provider and often at different points in time, to be able to use AISPs' services.

Proposed amendments to the RTS (1)

- To address these issues, the EBA is proposing to make a targeted amendment to the RTS, by introducing a new mandatory exemption to SCA for the specific case when the access is done through an AISP.
- To ensure the safety of the customers' data, the proposed mandatory exemption is subject to a number of safeguards and conditions:
 - The exemption only applies for access to a limited set of data;
 - SCA has to be applied for the first access and renewed periodically (every 180-days); and
 - the ASPSP retains the possibility to revert at any time to SCA if it has objectively justified and duly evidenced reasons to suspect an unauthorised or fraudulent access.
- For the separate case where customers access the data directly, the EBA is proposing to retain the exemption in Article 10 to be voluntary, as is currently the case, as no specific issues have been identified in such case.
- However, in order to ensure a level playing field amongst all PSPs, the EBA is proposing to extend the 90-days period for the renewal of SCA in Article 10 RTS to the same 180-day period for the renewal of SCA when the account data is accessed through an AISP.

Proposed amendments to the RTS (2)

- The EBA has also assessed other approaches, such as a mandatory delegation of SCA or removing the SCA requirement when the information is accessed through an AISP. However, the EBA has discarded these because they would not be legally possible under the PSD2 (as the EBA had also previously clarified in respect of the mandatory redirection through its 2018 Opinion on the implementation of the RTS), and can also not be brought about by amending the RTS.

Consultation Question 1: Do you have any comments on the proposal to introduce a new mandatory exemption for the case when the information is accessed through an AISP and the proposed amendments to Article 10 exemption?

Consultation Question 2: Do you have any comments on the proposal to extend the timeline for the renewal of SCA to 180-days?

Proposed amendments to the RTS (3)

- To give the industry sufficient time to implement the changes required to comply with the amending RTS, the draft CP foresees that the amendments will take effect 6 months after the publication of the final RTS in the Official Journal of the EU.
- Also, the draft CP provides that, by derogation from the provisions of Article 30(4) RTS, ASPSPs shall make available to AISP the changes made to the technical specifications of their interfaces required to comply with the amending RTS with at least one month ahead of their implementation, instead of the 3-months period ahead of their implementation foreseen by Article 30(4) RTS.
- This aims to give sufficient time to ASPSPs to adapt their interfaces, whilst keeping the implementation period (of 6 months) as short as reasonably possible.

Consultation Question 3: Do you have any comments on the proposed 6-month implementation timeline, and the requirement for ASPSPs to make available the relevant changes to the technical specifications of their interfaces not less than one month before such changes are required to be implemented?

Next steps

- **11 November 2021** – Public hearing;
- **25 November 2021** – Consultation period ends;
- **By end Q1 2022** – Assessment of the responses to the CP and submission of the final amending RTS to the European Commission (EC);
- Adoption and publication by the EC of the amending RTS as an EC Delegated Regulation;
- EU Parliament and Council scrutiny period;
- Application date of the RTS, proposed to be 6 months after the publication of the final RTS in the Official Journal.



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