

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, 27 March 2017

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Honourable Chair and Members of this Committee,

Following our appearance before you on 29 November 2016, we would like to express our thanks to you for giving the EBA another opportunity to update you on the work we carried out in close cooperation with the European Central Bank (ECB) in delivering the Technical Standards on strong customer authentication and common and secure communication (SCA & CSC) under the revised Payment Services Directive (PSD2).

When we appeared before you last time, we indicated that the EBA had received a total of 224 responses, which not only represented the highest number the EBA has ever received to any of its consultations, but has also provided the EBA with an unprecedented wide and representative view of all stakeholders that have an interest in these Technical Standards.

As you will be aware, we concluded our work just over a month ago, when we submitted to the EU Commission the Final Report, which includes the final draft Technical Standards themselves, and a very extensive 100-page feedback table. The feedback table reproduces our assessment of the 300 distinct concerns and requests for clarification that we identified in the responses we received. A number of comments focused on PSD2 itself rather than the RTS and the EBA was, therefore, not in a position to address them. Today, I would like to focus on the three broad

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issues that you raised with us in November last year, and I would like to explain how we have addressed them. Your concerns related to

- technological neutrality;
- exemptions to strong customer authentication, in particular regarding threshold levels; public transport networks and car parks; transaction risk analysis; and
- access to payment accounts.

### **Technological neutrality**

The EBA was confronted with a difficult trade-off between the objective of ensuring technological neutrality, which would suggest that no technological standard or existing technology-specific practices should be crystallised in European rules, against the competing objective of facilitating the development of a single, integrated payments market in the EU, which would suggest that we should instead aim at standardising the technological approach to be taken by market participants.

The Consultation Paper contained several references to particular technological approaches and international ISO standards. However, in light of the concerns raised by you and some respondents to the consultation, the EBA concluded that a different balance between these competing objectives should be found. We have, therefore, removed references to specific technological characteristics for the three elements of inherence, possession and knowledge at the basis of SCA, and also either removed references to international ISO standards such as ISO 27001 or narrowed their scope of application to the messaging template and for specific cases only.

### **Exemptions to Strong Customer Authentication**

You and several respondents were concerned about the limited scope and specific details of the exemptions to SCA. In particular, the comments focused on the absence of an exemption for the so-called transaction risk analysis; the impact on payments at public transport networks and car parks; and the threshold levels for exemptions proposed in the Consultation Paper. I will address each of them at a time.

#### **Public transport networks and car parks**

Some members of this committee expressed concerns about the impact of the RTS on public transport networks and car parks, and this was raised also by several respondents to the Consultation Paper. The EBA has assessed these concerns and arrived at the view that these concerns are valid. We have, therefore, added a new exemption for payments at the so-called unattended terminals for fares related to transport and parking services. We did so on the grounds of proportionality of the requirements, reflecting also the fact that the exemption would

be in the general public interest for operational reasons, to avoid queues and potential accidents at toll gates, and/or for security reasons.

### Transaction risk analysis

Some respondents to the consultation made the claim that, by restricting the exemptions to a narrow set, the EBA was not sufficiently allowing for ‘risk-based exemptions’ to take place and that the EBA was, therefore, inconsistent with Level 1 legislation. This was certainly not the case. Article 98(3) of the PSD2 requires the EBA to define exemptions based on the “level of risk involved in the service provided” and this is what the EBA has done, for example by including an exemption for transactions to trusted beneficiaries. The EBA is also mindful of the *desideratum* that the principle laid down in PSD2 is strong customer authentication and that any exemption should not become the rule but rather remain an exception.

The EBA is equally clear in rejecting the proposal made by some respondents for the RTS to include an exemption that allows payment services providers (PSPs) to decide themselves whether or not the authentication requirements apply, based on their own risk analysis. Such an exemption would leave it to the addressees of the rules to decide whether or not they are subject to the requirements specified in the law.

However, we considered your view and that of many respondents and concluded that there is merit for the EBA to introduce an exemption based on transaction risk analysis, but that such an exemption would need to be tied to objective and tightly defined criteria.

This is what we have done. We have introduced an additional exemption, which is available for transactions up to the amount of €500 and is linked to fraud rates that are defined in the draft RTS, which provide incentives to PSPs to strengthen the protection of customers. Where a PSP identifies a transaction through real-time transaction risk analysis as being of low risk based on a range of parameters defined in the RTS, the PSP will have the option not to use SCA, provided the PSP’s fraud rate is below the applicable reference fraud rate.

We consider the reference fraud rates to be demanding and achievable but acknowledge that they are based on fraud data that is insufficiently representative of the different payments market in the 28 EU Member States. For this reason, we have also introduced a review clause 18 months after the application date of the RTS for this particular exemption, in order for the reference rates to be updated in light of the fraud data that PSPs will have to submit to national authorities, the ECB and the EBA under Article 96 of PSD2.

### Threshold levels

In the Consultation Paper, the EBA proposed an exemption based on a threshold level of EUR 10. We did so in order to contribute to the objective of the PSD2 of enhancing security, and mindful that security issues can undermine market confidence in innovative payments, which in turn may impede the adoption of such innovations by consumers and hamper the objective of the

PSD2 to enhance competition through innovation. In so doing, we were aware that tight security requirements would be potentially at the expense of the competing objective of the PSD2 of enhancing customer convenience.

However, having assessed your concerns and those of several respondents, we arrived at the view that the RTS will need to find a different balance between these objectives. We, therefore, increased the low value exemption for remote payments from EUR 10 to EUR 30. We did not follow the suggestion of some respondents to increase it to the threshold level of EUR 50 that applies to contactless payments, due to the different fraud risks between these two payment channels.

### **Access to payment accounts**

As to the access to payment accounts, you raised concerns with regards to the communication between account servicing payment service providers (ASPSPs, mostly banks), account information service providers (AISPs) and payment initiation service providers (PISPs), and so did several respondents to our Consultation Paper.

Having consulted with the European Commission on the interpretation of the Directive, the EBA has come to the conclusion that once the transition period under the PSD2 has elapsed and the RTS applies, the PSD2 no longer allows the current practice of third party access often referred to as 'screen scraping'.

This interpretation is based on a number of requirements in PSD2 that are applicable to PISPs and AISPs, so allow me to make a few legal references. For example, under Articles 66 and 67 of PSD2, account information and payment initiation service providers are required:

- to identify themselves,
- to communicate securely; and
- NOT to “use, access or store any data for purposes other than for performing the [service] explicitly requested by the payment service user access”.

In addition, Article 115 of PSD2 provides that these providers have the right to continue to access payment accounts in the way they currently do only for a transitional period between the application date of PSD2 and the application date of the RTS.

The aggregate effect of these legal provisions leads to the only plausible interpretation of the Directive that the current way of account access will no longer be possible once our RTS apply.

The sole legal avenue available for the EBA that would ensure that banks share data with other providers without the need for a contract was, therefore, to require ASPSPs to offer at least one interface for AISPs and PISPs to access payment account information. The RTS furthermore provides that ASPSPs may either develop a new dedicated interface or allow the use of an

adapted version of the existing interface they are using for the identification and communication with their own customers. In both cases, payment initiation and account information services providers would be able to access the data they need to service their customers.

However, in order to address the legitimate concerns raised with us in respect of the smooth and continued access to the dedicated interface, we have added a requirement to the Technical Standards that banks have to provide the same level of availability and performance as the interface offered to, and used by, their own customers, with the same level of contingency measures in case of unplanned unavailability; and to open the interfaces ahead of release so as to enable PISPs and AISPs to test the interfaces. We have also clarified that the ASPSPs have the obligation to provide an immediate confirmation to the PISP whether funds were available to ensure the PISP is able to process the payment.

This ensures that PISPs and AISPs have access to, and receive, the same information as they currently do. But unlike current practice, they will do so securely and in a way that can be harmonised between providers, to facilitate the key objective of the PSD2 of bringing about an integrated and competitive payments market in the EU. It is also the utmost we were legally able to do, given that the EBA is limited by the wording of the mandate, which does not allow us to consider other options, such as defining details of a fall back option should the dedicated interface fail to work.

## **Conclusion**

The changes we have made in the RTS following the consultation responses have focused on recalibrating some of the difficult trade-offs we had to make between a number of different, and at times conflicting, objectives. In so doing, we have provided a solid basis for enhancing security, facilitating innovation, promoting competition, protecting consumers, and contributing to a single EU payments market. As a result, the payments landscape will look and feel different once the PSD2 and, later, the RTS will apply from 2018 onwards, which will require both market incumbents and market challengers to adapt in order to seize the opportunities that the PSD2 will provide.

Thank you for your attention