

THE CHAIRPERSON

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European Commission
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EBA Regulatory Technical Standards on Strong Customer Authentication and Common and Secure Communication under PSD2

Dear Mr Guersent,

The European Commission adopted the regulatory technical standards (RTS) for strong customer authentication and common and secure open standards of communication (SCA and CSC) on 27 November 2017, which as you know triggered a three-month scrutiny period with the EU Parliament and the EU Council in accordance with Article 13 of Regulation (EU) No 1093/2010¹.

The timely adoption of these RTS is welcomed, as certainty should be provided to the market as soon as possible in respect of this key-delegated regulation supplementing PSD2. A timely publication of these RTS is key to ensuring that the objectives of PSD2 will be achieved, and the EBA continues to be committed to contributing to this endeavour.

I appreciate the decision of the Commission to partially reflect the strong concerns that had been raised by the EBA in its Opinion on 26 June 2017 by enabling ASPSPs to be exempted from the obligation to allow contingency access for AISP and PISP via so-called 'screen scraping'.

I understand and respect the Commission's decision not to fully accept the indications contained in the EBA's Opinion. However, the version of the EBA's RTS that the EU Commission adopted on 27 November 2017 contains significant changes that were neither in the final draft RTS that the EBA submitted on 27 February 2017, nor in the amendments that the EU Commission proposed to the EBA in their letter dated 24 May 2017, nor in the formal opinion containing revised RTS that the EBA submitted on 26 June 2017 in response to said letter in accordance with the procedure set out in Article 10(1), fifth sub-paragraph, of Regulation (EU) No 1093/2010.

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.12).



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It is our view that the EBA should have been granted the opportunity to provide its opinion on the *new* changes applied and adopted by the Commission in the 27 November 2017 version. The omission of a formal consultation is not in line with the due process set out in Article 10(3), sixth sub-paragraph, of Regulation (EU) No 1093/2010, which provides that “The Commission may not change the content of a draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article”. We trust that this will not serve as a precedent, and that the EBA will in future be consulted on all changes that the Commission proposes to make to EBA draft technical standards.

In terms of substance, discussions with CAs at our Standing Committee highlighted a concern that the changes introduced in the RTS adopted by the Commission on 27 November 2017 may impose significant additional administrative and operational burden on the PSPs as well as CAs, which will likely require significant additional resources.

Account servicing payment service providers (ASPSPs) that wish to develop dedicated interfaces for the identification and communication with account information service providers (AISPs), payment initiation service providers (PISPs) and with other PSPs, will have to comply with a significant number of additional requirements introduced in revised Articles 32 and 33 of the RTS.

New tasks for CAs include those under new Article 17 of the RTS, which assigns to the CAs the responsibility of verifying the level of security of the dedicated payment processes or protocols of corporate payments exempted from SCA. It also includes new Article 30(6) that requires CAs to ensure that ASPSPs are at all times compliant with the RTS requirements relevant to the interfaces for PISP and AISP and new Article 32(2), requiring CAs to monitor and stress-test dedicated interfaces, indicators and targets defined by ASPSPs.

Articles 33(6) and 33(7), in turn, assign to CAs the new task of exempting ASPSPs from the obligation to implement the contingency mechanism for the dedicated interface, in consultation with the EBA and where the dedicated interface meets an number of conditions including that the interface “has been designed and tested in accordance with Article 30(5) to the satisfaction of the payment service providers referred to therein”.

It is not clear what the EBA’s role should be when it is being ‘consulted’ by CAs. More importantly, the interface could only ever be conceivably tested *as implemented on the IT system of an ASPSP*. This new provision could therefore potentially be read as implying that CAs are required to carry out such testing for each PSP and its IT system individually, and that the EBA would need to be consulted on each of them. Given that more than 6,000 banks are currently authorised in the EU, the specialised IT resources needed to perform any meaningful review of the CAs’ decisions would be very significant. The link between this requirement imposed on the EBA and CAs on the one hand and the industry group that is being set up separately by the Commission and tasked with evaluating APIs on the other is also unclear and would benefit from some clarification.

We also note that a number of the changes adopted by the Commission in the 27 November 2017 version leave significant room for interpretation, and increase the risk of unlevel playing field.

Such changes include new requirements for CAs and the EBA, in relation to certifying that the ASPSPs that choose to develop dedicated interfaces comply with all applicable requirements under the RTS in order to exempt them from having in place what is commonly referred to as a ‘fallback’ solution. Another condition for ASPSPs under the same Article is for the interface to be designed and tested to ‘the satisfaction of the payment service providers’ that seek to access the accounts. This is of particular concern, inter alia because this provision appears to make the eligibility for the exemption to a legal requirement of one category of providers (ASPSPs, i.e. banks) contingent on the ‘satisfaction’ of another, competing category of providers (AISPs and PISPs), and does so without specifying how CAs and the EBA are meant to establish said satisfaction.

By way of conclusion, the timely adoption of these RTS is welcome, but may need to be complemented by efforts to ensure consistent interpretation and application of some provisions. The EBA stands ready to assist further with any technical issues arising from the application of PSD2 and its delegated acts, as per tasks and objectives defined in Regulation (EU) No 1093/2010 including through the extension of the EBA’s Q&A process to PSD2, via supervisory convergence efforts with CAs, with issuing guidelines where applicable and by providing assistance to the industry group that is being set up by the Commission.

Yours sincerely

Signed

Andrea Enria

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