



EUROPÄISCHES PARLAMENT

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Mitglied des Europäischen Parlaments

European Banking Authority
Andrea Enria
Chairman
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Implementation of the Recast of the Payment Services Directive (PSD2)

Dear Chairman, dear Mr Enria,

please allow me to approach you with a matter that I believe deserves your attention: the implementation of the Recast of the Payment Services Directive (PSD2).

As you will recall, the European Parliament took a distinct interest in the implementing legislation under PSD2 and in particular in the question of how the letter and the spirit of the level 1 text were best safeguarded in the delegated regulation on strong customer authentication and secure communication. You will also recall that the European Parliament's PSD2 negotiation team as a whole and I personally had great doubts on whether the initial drafts of that delegated regulation presented by the European Banking Authority were indeed capable of opening the market for payment services beyond traditional providers such as banks. After months of tough negotiations, we eventually reached an agreement based on a sensible fall-back option, that took into account both the interests of third party payment providers (TPPs) and banks and overall presented a very balanced approach.

Following the adoption of the delegated regulation on strong customer authentication and secure communication, the European Banking Authority adopted certain pieces of level 3 guidance that now moves away from that balanced approach and shifts the balance of power significantly towards banks. While initial EBA guideline drafts have been improved in some areas, there are still a couple of points that I deem to be highly problematic and that I wanted to bring to your attention:

Redirection: In its guidelines on the conditions to benefit from an exemption from the contingency mechanism under Article 33(6) of Regulation (EU) 2018/389 (RTS on SCA & CSC) adopted on 4 December 2018 (cf. EBA/GL/2018/07), EBA states "that redirection is not, in itself, an obstacle", but only may be one if it is applied "in a manner that creates delay or friction." I strongly disagree with this view as redirection itself constitutes friction in the customer experience and might cause the client to abort the payment procedure. Not being able to provide a seamless end-to-end customer experience constitutes a severe competitive disadvantage for TPPs compared to traditional players.

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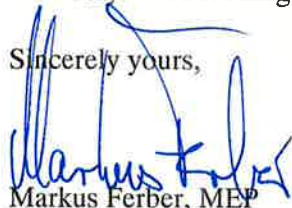
Fraud Prevention: The provisions in the PSD2 are clear in that identification elements of the payment service user do not constitute sensitive payment information. Therefore, currently TPPs have access to such information as it helps with identification and fraud prevention. However, in the aforementioned guidelines, EBA states that the data “that ASPSPs are required to share with TPPs, in accordance with PSD2 and the RTS, do not include data on the identity of the PSU.” As one of the objectives of the PSD2 is to increase investor protection and the respective articles of PSD2 state that TPPs should be allowed to access data needed to provide payment initiation services and account information services, that data should also include information used for increasing consumer protection and improving fraud prevention.

White-listing of trusted beneficiaries: In one of the answers in the Q&A section (Question ID: 2018_4076) EBA states that “the creation or amendment of such a list [of trusted beneficiaries] through the services of a PISP or an AISP is not possible.” However, retail clients should rightly expect to be able to put the recipient of a payment onto a white list when initiating a payment to that recipient. After all, that is possible with bank-based payment services, too. Once again, the payment process through TPPs is made unnecessarily harder.

While each of these points on its own might not look like a significant impediment, the sum of all these provisions and similar attempts in the original draft guidelines lead me to conclude that the European Banking Authority is attempting to change a directive and a delegated regulation that turned out not to be to its liking through the backdoor. I would very much like to remind you that it is not EBA’s role to reverse the decisions made by the Union legislator by issuing level 3 guidance that is in contradiction with either the words or the spirit of what has been voted into law. Therefore, I kindly invite you to change your approach towards this matter.

I am very much looking forward to hearing from you regarding this matter and remain

Sincerely yours,



Markus Ferber, MEP