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Consultation Paper

Draft Guidelines on the conditions to be met to benefit from an exemption from contingency measures under Article 33(6) of Regulation (EU) 2018/389 (RTS on SCA & CSC)

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- (1) respond to the question stated;
- (2) indicate the specific point to which a comment relates;
- (3) contain a clear rationale;
- (4) provide evidence to support the views expressed/ rationale proposed; and
- (5) describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 13.08.2018. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Abbreviations

AIS	Account information services
AISP	Account information service provider
ASPSP	Account servicing payment service provider
CA	Competent authority
CBPII	Card based payment instrument issuer
CP	Consultation Paper
EBA	European Banking Authority
EU	European Union
GL	Guidelines
PIS	Payment initiation services
PISP	Payment Initiation Service Provider
PSD2	Directive (EU) 2015/2366 on payment services in the internal market
PSP	Payment service provider
PSU	Payment service user
RTS	Commission Delegated Regulation (EU) 2018/389 with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication

3. Executive Summary

Directive (EU) 2015/2366 on payment services in the internal market (PSD2) entered into force on 12 January 2016 and applies as of 13 January 2018. The objectives of PSD2 are to facilitate competition and innovation in the payments market and this aim is enshrined in the right of regulated actors providing account information services (AIS) and payment information services (PIS) to access the payment account of the PSU. More specifically, Article 98(1) of PSD2 mandated the EBA to develop regulatory technical standards on strong customer authentication and common and secure communication.

The final version of the RTS was published as an EU Regulation in the Official Journal of the EU in March 2018, and which will become applicable in September 2019, contained several amendments that the EBA had not originally submitted to the Commission. In particular, Article 33(6) of the final RTS sets out the conditions that must be met when an ASPSP wishes to provide access via a dedicated interface in order to be eligible for the exemption from having contingency measures (fall back) in place in accordance with Article 33(4) of the RTS. The RTS require competent authorities (CAs), 'after consultation with the EBA', to exempt ASPSPs from the requirement to implement the 'fall back' if the ASPSP can show that it and the dedicated interface meet the four conditions under Article 33(6).

In reviewing these amendments and additional requirements, the EBA identified a need to clarify the requirements ASPSPs need to meet to obtain an exemption and the information CAs should consider to ensure the consistent application of these conditions across national jurisdictions. The EBA must also fulfil its statutory mandate of bringing about regulatory and supervisory convergence across the EU and to support the objectives of PSD2 of contributing to a single EU payments market. The EBA therefore arrived at the view that it should issue Guidelines on the conditions and the factors that national authorities should consider to determine whether or not an ASPSP qualifies for the exemption foreseen in the RTS.

The requirements proposed in this Consultation paper provide clarity in respect of the service level, availability and performance of the interface that the ASPSP needs to have in place, the publication of the performance indicators, the stress testing to be carried out, obstacles to accessing payment accounts, the design and testing of the interfaces to the satisfaction of payment services providers, the wide usage of the interface, the resolution of problems, and the consultation by CAs with the EBA.

Next steps

The consultation period will run from 13 June 2018 to 13 August 2018. The final Guidelines will be published after this consultation.

4. Background and rationale

4.1 Background

1. Directive (EU) 2015/2366 on payment services in the internal market (PSD2) entered into force on 12 January 2016 and applies as of 13 January 2018. The objectives of PSD2 are to facilitate competition and innovation in the payments market and this aim is enshrined in the right of regulated actors providing AIS and PIS to access the payment account of the PSU.
2. More specifically, Article 98 (d) of PSD2 mandated the EBA to develop regulatory technical standards on “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, between account servicing payment service providers, payment initiation service providers, account information service providers, payers, payees and other payment service providers”.
3. Following the publication of a discussion paper in December 2015 and a consultation paper in August 2016, the EBA submitted to the EU Commission in February 2017 the draft of the RTS. The final version that was subsequently published, in March 2018, as an EU Regulation in the Official Journal of the EU, and which will become applicable on 14 September 2019 contained several amendments that the EBA had not originally submitted.
4. In particular, Article 33(6) of the RTS sets out the conditions that must be met when an ASPSP wishes to provide access via a dedicated interface in order to be eligible for the exemption from having contingency measures (fall back) in place in accordance with Article 33(4) of the RTS. The RTS requires CAs, ‘after consultation with the EBA’, to exempt ASPSPs from the requirement to implement the ‘fall back’ if the ASPSP can show that it and the dedicated interface meet the four conditions under Article 33(6).

5. Article 33(6) states that:

“Competent authorities, after consulting EBA to ensure a consistent application of the following conditions, shall exempt the account servicing payment service providers that have opted for a dedicated interface from the obligation to set up the contingency mechanism described under paragraph 4 where the dedicated interface meets all of the following conditions:

- (a) it complies with all the obligations for dedicated interfaces as set out in Article 32;*
- (b) it has been designed and tested in accordance with Article 30(5) to the satisfaction of the payment service providers referred to therein;*
- (c) it has been widely used for at least three months by payment service providers to offer account information services, payment initiation services and to provide confirmation on the availability of funds for card-based payments;*
- (d) any problem related to the dedicated interface has been resolved without undue delay.”*

6. ASPSPs thus have an obligation, if they wish to benefit from the exemption, to provide a dedicated interface that meets the conditions listed in Article 33(6) and to provide evidence of the same to CA. Provided that CAs are satisfied that all the conditions are met, they shall exempt ASPSPs from the requirements to build the fallback.
7. However, in reviewing these amendments and additional requirements, the EBA identified a need to clarify the requirements ASPSPs need to meet to obtain an exemption and the information CAs should consider. In addition, ASPSPs developing dedicated interfaces are likely to be seeking an exemption in sufficient time for them to comply with the RTS when they apply in September 2019, which is why the EBA expects a high volume of applications for exemptions in the relatively short period of time leading up to that deadline.
8. Finally, the EBA must also fulfil its statutory mandate of bringing about regulatory and supervisory convergence across the EU and to support the objectives of PSD2 of contributing to a single EU payments market.
9. The EBA therefore arrived at the view that it should issue Guidelines on the conditions and the factors that national authorities should consider. To determine whether or not an ASPSP qualifies for the exemption foreseen in the RTS. The Guidelines aim at ensuring that the conditions for the exemptions are consistently applied and that the fallback interface envisaged in the RTS is consistently available across the 28 EU Member States.
10. With regard to the interpretation of the requirement for the CAs to “consult with the EBA”, the approach proposed in these Guidelines is deliberately pragmatic in nature, in order for the CAs and the EBA to be able to carry-out the large number of assessments that are expected to be needed in the short period leading up to the September 2019 deadline. The approach is therefore unique to these Guidelines.
11. For the same reason of pragmatism and time criticality, these Guidelines focus on the *granting* of exemptions leading up to the September 2019 deadline and does not address the requirement under Article 33(7) that foresees that CAs may subsequently revoke an exemption if certain conditions are not met “for more than two consecutive calendar weeks”. The EBA will provide clarity on this issue at a later stage.
12. Where referring to AISPs, PISPs and (CBPIIs), the Guidelines refer to all authorised or registered PSPs providing these services, including credit institutions.
13. In what follows below, this Consultation Paper explains the reasoning for some of the options the EBA has considered and the decisions the EBA has taken during the development of the Guidelines that are being proposed.

4.2 Rationale

14. The conditions foreseen in Article 33(6) of the RTS are high-level and formulated on the assumption that the dedicated interface has been operative for some time so that the conditions can be assessed by CAs. The timelines in the RTS create difficulties for ASPSPs seeking an exemption prior to September 2019 given that these ASPSPs are seeking an exemption ahead of the RTS applying and therefore before the dedicated interface, for most ASPSPs, has been operational in an industry live usage setting. This has led to challenges when considering how to practically apply the conditions and identify whether or not an exemption should be granted. The EBA considered each of the conditions in turn and the factors that CAs should consider when assessing if the conditions are met.

Article 33(6)(a) – Obligations for the dedicated interface

15. The first condition requires that the dedicated interface ‘complies with all the obligations for dedicated interfaces as set out in Article 32’. Article 32, in turn, states that

“1. Subject to compliance with Article 30 and 31, account servicing payment service providers that have put in place a dedicated interface shall ensure that the dedicated interface offers at all times the same level of availability and performance, including support, as the interfaces made available to the payment service user for directly accessing its payment account online.

2. Account servicing payment service providers that have put in place a dedicated interface shall define transparent key performance indicators and service level targets, at least as stringent as those set for the interface used by their payment service users both in terms of availability and of data provided in accordance with Article 36. Those interfaces, indicators and targets shall be monitored by the competent authorities and stress-tested.

3. Account servicing payment service providers that have put in place a dedicated interface shall ensure that this interface does not create obstacles to the provision of payment initiation and account information services. Such obstacles, may include, among others, preventing the use by payment service providers referred to in Article 30(1) of the credentials issued by account servicing payment service providers to their customers, imposing redirection to the account servicing payment service provider's authentication or other functions, requiring additional authorisations and registrations in addition to those provided for in Articles 11, 14 and 15 of Directive (EU) 2015/2366, or requiring additional checks of the consent given by payment service users to providers of payment initiation and account information services.

4. For the purpose of paragraphs 1 and 2, account servicing payment service providers shall monitor the availability and performance of the dedicated interface. Account servicing payment service providers shall publish on their website quarterly statistics on the availability and performance of the dedicated interface and of the interface used by its payment service users.”

16. In what follows in the remainder of this chapter, each of the components are addressed in turn, starting with availability and performance, followed by stress testing, monitoring and obstacles.

Availability and Performance

17. Article 32(1) of the RTS requires the dedicated interface to have the same level of availability and performance as the PSU interface and Article 32(2) of the RTS requires the ASPSP to set key performance indicators (KPIs) and service level targets for the dedicated interface that are 'as stringent' as those set for the PSU interface.
18. Given the above, and taking into account the aim of PSD2 to support the provision of AIS, PIS and issuing of card-based payment instruments and to enable transparency of availability and performance and thus an ability for PSUs, AISPs, PISPs, CBPIIs and CAs to compare performance, the EBA has arrived at the view that in order to qualify for the exemption, ASPSPs should have the same service level objectives and targets, contingency plans, monitoring and out-of-hours support for their dedicated interface as for the PSU interface. This is proposed in Guideline 2.1.
19. To further compare availability the EBA has identified a minimum set of KPIs to allow for the comparison between dedicated and PSU interfaces. These KPIs should be published in a place on the ASPSP website that is easily accessible to all.
20. Guideline 2.2 consequently requires ASPSPs to have in place a minimum set of KPIs that provide transparency on the availability of the dedicated interface relative to the PSU interface based on uptime and downtime.
21. The EBA is of the view that availability, as measured in terms of uptime and downtime, is a metric that is directly comparable between the dedicated and PSU interfaces. The EBA is also of the view that it is more difficult to have comparable metrics for performance as the nature of the interaction between the actors engaging via a dedicated interface and an ASPSP/PSU interaction are different and not necessarily reliably comparable. In this CP, the EBA is proposing metrics for performance based on response times and accuracy of information provided so that there is transparency on the functioning of the dedicated interface.
22. The EBA is also proposing a formula to calculate uptime and down time taking into account performance so as to arrive at a figure that can be compared for the PSU and dedicated interface. For the purpose of GL 2.2, it is assumed that the dedicated interface 'up-time' is when accurately fulfilling responses to requests from PSPs. For this reason periods when the dedicated interface meets the conditions in Article 33(1) of the RTS should be counted as 'down-time'. Furthermore, the performance metric for a yes/no response to a CBPII should not be used for the calculation of downtime as there is no direct PSU service for any such comparison.
23. In the process, the EBA assessed the pros and cons of the additional option of not only identifying the KPIs themselves but also setting specific numeric availability and performance targets for each of the KPIs. However, given that the availability and performance of the dedicated interface is linked to the availability and performance of the PSU interface, and that this will of course vary across firms, the EBA eventually did not pursue this option further and is not proposing any such targets in the Guidelines.
24. Furthermore, the EBA has arrived at the view that the ASPSP can have more than one PSU interface, and many will have a least two, online banking and mobile banking interfaces. This

makes comparison of the dedicated and PSU interface difficult as when access is via a dedicated interface it will not always be apparent to the ASPSP whether the PSP access to the dedicated interface is instigated via the PSU online or PSU mobile interface. For this reason ASPSPs should publish availability data for all PSU interfaces, which is reflected in GL 3. For the purposes of monitoring, CAs should check that the dedicated interface matches the highest level of availability of any of the best performing PSU interfaces of the ASPSP.

25. In addition to setting the KPIs, the ASPSP is required under Article 32(4) of the RTS to publish quarterly statistics on availability and performance. The EBA is of the view that, for the purpose of applying for an exemption, the ASPSP must provide to the CA a plan to publish these statistics including the date from which publication will begin. The EBA also notes that publication in advance of September 2019 would potentially overlap with the testing phase and consequently would make the provision of meaningful comparative performance statistics impracticable.

Question 1: Do you agree with the EBA's assessments on KPIs and the calculation of uptime and downtime and the ASPSP submission of a plan to publishing statistics, the options that EBA considered and progressed or discarded, and the requirements proposed in Guideline 2 and 3? If not, please provide detail on other KPIs or calculation methods that you consider more suitable and your reasoning for doing so.

Stress Testing

26. The EBA then considered stress testing and arrived at the view that it is not possible to stress test targets and indicators and therefore stress testing must only be in relation to the dedicated interface. The EBA also came to the view that it must be the ASPSP that is required to perform stress testing as Article 32(2) places 'stress testing' after the reference to 'competent authorities'. For this reason stress testing is not an obligation imposed on the CAs.
27. Stress testing is a type of performance testing focused on determining software and hardware robustness, availability, and reliability under extreme conditions. The goal of stress testing is to identify issues that arise or become apparent only under extreme conditions.
28. The EBA considered what information should be provided by ASPSPs to the CA so as to allow the CA to carry out the assessment and to ensure a consistent approach. The EBA came to the view that it is appropriate for the ASPSP to stress test for heavy loads, high concurrency, and requests for large volumes of data.
29. The EBA considered and discarded a wider range of other testing scenarios, such as security and penetration testing. The EBA came to the view that these other testing scenarios will be undertaken by ASPSPs as part of their conventional IT testing to ensure that dedicated interfaces are robust and secure before launch into a live use environment.

30. The above is being proposed in Guideline 4, including Guideline 4.3 which proposes that ASPSPs provide evidence of stress testing and the results to the CA.

Question 2: Do you agree with the EBA’s assessments on stress testing and the options it considered and progressed or discarded, and the requirements proposed in Guideline 4? If not, please provide your reasoning.

Monitoring

31. Article 32(2) RTS requires CAs to monitor the ASPSPs’ interface and KPIs. The EBA has come to the view that CAs should monitor compliance of ASPSPs with the requirement for the quarterly publication of statistical data and monitor KPIs.
32. Furthermore, the EBA arrived at the view that that this monitoring of the KPIs should be part of the supervisory activity of CAs, which should take into account the level of market activity, market intelligence and user complaints. Although Article 33(6) requires that the dedicated interface must comply with the requirements set out in Article 32, and whilst the requirements for CAs to monitor is stipulated in Article 32 of the RTS, this is not a requirement with which the ASPSP can plausibly comply. The EBA is therefore of the view that the monitoring by CAs cannot plausibly be one of the requirements for granting an exemption to an ASPSP.

Question 3: Do you agree with the EBA’s assessments on monitoring? If not, please provide your reasoning.

Obstacles

33. The EBA recognises that Article 32(3) RTS, with regard to what is or is not an obstacle to the provision of PIS or AIS, has generated much debate in the market both before and after publication of the RTS. The EBA assessed the potential interpretations of this provision and arrived at the view that the most plausible intention of this requirement is to ensure that PISPs, AISP and CBPIs are not hindered in the provision of their services to PSUs and that there is a level playing field for all actors.
34. However, the requirement is not very clear as to what is and is not to be considered an obstacle, as it gives a number of possible examples in a non-exhaustive list and uses the term “may”. The EBA has considered this list of examples and has come to the view that the following examples would hinder the provision of PIS, AIS and card based payment instrument issuing and would therefore constitute an obstacle:

- a. prohibiting an AISP or PISP from using credentials issued by the ASPSP because this is linked to relying on authentication procedures which is specifically permitted in Article 97(5) PSD2; in this context 'redirection' does not mean that an AISP or PISP is not using credentials or relying on authentication procedures provided by the ASPSP as, in this case, the AISP/ PISP is not required to issue its own credentials or authentication procedures and therefore is able to 'use' the PSU credentials and rely upon the ASPSP authentication procedures;
 - b. imposing on authorised AISPs, PISPs and CBPIIs requirements in addition to those detailed in the legislation (the authorisation provided by CAs) where they are not equally applied to credit institutions that provide such services because there should be no discrimination in the treatment of providers; and
 - c. requiring additional checks on consent for the provision of these services because each firm is responsible for its own compliance with all relevant legislation.
35. The EBA has arrived at the view that other requirements, too, may be obstacles depending upon the manner in which they are implemented. Such obstacles may arise because the IT solution for the dedicated interface or its implementation creates friction, delay or unnecessary steps that would directly or indirectly dissuade PSUs from using the services offered by PISPs, AISPs or CBPIIs. The use of what is commonly referred to as 'redirection' is not in itself an obstacle. Redirection describes a process whereby once consent has been given to the AISP/PISP to access a PSU's account for the purpose of an AIS or PIS, the PSU is 're-directed automatically to the ASPSP's domain (webpage or application) for the purpose of entering the ASPSP issued credentials to complete authentication. The PSU is then directed back to the AISP/PISP domain for the completion of the process.
36. Other known methods of access are 'embedded' and 'decoupled'. One or a combination of these methods of access is used in markets across the EU. As previously stated, the EBA's reading of the text is that the use of redirection by an ASPSP as its preferred method of access is not per se an obstacle; nor is there a requirement in PSD2 or the RTS for an ASPSP to provide more than one method of access.
37. However, the EBA is of the view that, in order to ensure that AISPs and PISPs can rely upon all the "authentication procedures" provided by the ASPSP to the PSU, ASPSPs must consider all user credentials and authentication procedures and the combinations of those credentials and procedures in which the ASPSP permits PSUs to authenticate themselves and consider how the customer experience is managed for PSUs when accessing payment accounts via an AISP or PISP.¹
38. When implementing access solutions and the method of access for a dedicated interface, ASPSPs should therefore consider these authentication options and requirements in their design and implementation plans and ensure that PSU customer journeys and user experiences are not directly or indirectly impacted and that solutions take account of credentials that are

¹ Article 97(5) PSD2

communicated to the ASPSP (e.g. password) and those that are not communicated (e.g. biometric data), because the data resides on the PSU device.

39. The EBA acknowledges that, as a result, ASPSPs that have provided to their own PSUs different methods of authentication may need to accommodate different methods of access for different channels (browser/mobile/point of sale) in order not to hinder future innovation and to meet the legal requirements in Article 97(5) PSD2.
40. The EBA is therefore of the view that any method of access may be an obstacle depending on how it has been implemented and CAs should consider the user experience, whether the access method accommodates all methods of authentication and how this impacts on the user experience or if it creates delays and friction in the customer journey when assessing an exemption application for a dedicated interface that provides for access using only a single method of access.
41. In the process, the EBA assessed and discarded the options of setting specific requirements on the different methods of access, as this will, of course, vary across firms and may change over time and because this is a competitive matter for firms and how they differentiate themselves in the market.

Question 4: Do you agree with the EBA’s assessments on obstacles, the options it considered and progressed or discarded, and the requirements proposed in Guideline 5? If not, please provide your reasoning.

Article 33(6)(b) –Designed and tested to the satisfaction of PSPs

42. The second condition in Article 33(6) for granting an exemption is that the dedicated interface has been ‘designed and tested in accordance with Article 30(5) to the satisfaction of the payment service providers’. More specifically, Article 30(5) states that:

“Account servicing payment service providers shall make available a testing facility, including support, for connection and functional testing to enable authorised payment initiation service providers, payment service providers issuing card-based payment instruments and account information service providers, or payment service providers that have applied for the relevant authorisation, to test their software and applications used for offering a payment service to users. This testing facility should be made available no later than 6 months before the application date referred to in Article 38(2) or before the target date for the market launch of the access interface when the launch takes place after the date referred to in Article 38(2).”

43. In what follows in the remainder of this chapter, each of the components are addressed in turn, starting with information and testing facilities, design, and testing.

Information and Testing Facilities

44. The EBA has arrived at the view that this requirement must be read together with Article 30(3), which requires ASPSPs to make available “at no charge, upon request by authorised payment initiation service providers, account information service providers and payment service providers issuing card- based payment instruments or payment service providers that have applied to their competent authorities for the relevant authorisation” documentation that details the technical specification for these providers to connect to and test the dedicated interface. A summary of the documentation must also be publically available on the ASPSP website.
45. Article 30(5) refers only to authorised AISP/PISP/CBP/II or those that have applied to be authorised. These activities can and will be undertaken by credit institutions. Credit institutions do not need an authorisation from a competent authority to undertake AIS, PIS, or issuing of card-based instruments but when they undertake such activities they must comply with the obligations under the PSD2 and the RTS. Furthermore, not all CAs confirm to firms in writing that their application to undertake regulated activity has been received so it may not be easy for a firm to evidence that it has applied for the relevant authorisation.
46. To ensure that firms are able to gain access to the technical specifications and testing facilities when an authorisation is pending, the EBA would encourage CAs, on request from the applicant to provide a simple confirmation that an application has been received. Such a confirmation is no indication or guarantee that an authorisation will be granted but a simple acknowledgement which, if requested, will facilitate the applicant in gaining access to the technical specification and testing facility of the ASPSP.
47. Where CAs do provide an acknowledgement of application, the EBA encourages ASPSPs to accept these acknowledgements as confirmation that an application has been received by the CA and to provide the technical specifications and access to testing facilities.

Design

48. Article 33(6)(b) also requires CAs to consider the design of the dedicated interface. The EBA assessed possible interpretations of this requirement and arrived at the view that the most plausible reading is that ‘design’ can plausibly only be in relation to the legal requirements for access and data detailed in PSD2 and the RTS and that it cannot plausibly refer to a list of requirements that is independent of the legislation.
49. The EBA is aware of the divergent market views on the scope of the requirements that a dedicated interface should meet. The EBA has come to the view that it will be practically challenging for CAs to assess whether the design has been “to the satisfaction of the payment service providers” for the following reasons: the variety of business models in the market and the divergent and possibly opposing views that would be held by the many PSPs authorised in a given jurisdiction or providing services from another EU jurisdiction. All these factors would have to be taken into account by the CA when assessing whether PSPs are satisfied. To ensure a harmonised approach to the assessment of design the EBA has arrived at the view that CAs, when assessing the design, should identify whether the different types of market participants have been involved and whether the design of a dedicated interface was in line with legal requirements. This is reflected in Guideline 6.

50. The EBA is also of the view that ASPSPs are free to choose to offer, via the dedicated interface, more services to AISP, PISP and CBPII than is required by PSD2, such as access to other types of account and/or access to additional data, but they are not required to do so under the PSD2 or the RTS. For this reason, CAs cannot be required to assess the design of a dedicated interface against potentially desirable but legally not mandated design features.
51. Furthermore, the EBA is of the view that when considering the ‘design’ of the dedicated interface CAs may consider the work undertaken by other organisations and CAs may find the work and output of the Application Programming Interface Evaluation Group (API EG)² of use in this regard.

Testing

52. The EBA also came to the view that testing in this case is all limited to the testing of the dedicated interface for the purpose of ‘connection and functional testing’ as stated in Article 30(5).
53. Furthermore the EBA has arrived at the view that the most plausible interpretation of the wide concept of “satisfaction” of the payment service providers must legally be seen within the scope and context of PSD2, of the RTS and, ultimately, of the Article in which the concept is being introduced, i.e. Article 30(5), which is primarily about connection and functional testing. The EBA has therefore arrived at the view that the satisfaction refers only to the testing of the interface for connection and functional testing by AISP, PISP and CBPII to test their software and applications. The EBA has proposed in Guideline 6 that testing should include establishing and maintaining a connection, exchange of certificates, exchange of data and flow of error messages.

Question 5: Do you agree with the EBA’s assessments for design and testing, the options it considered and progressed or discarded, and the requirements proposed Guideline 6? If not, please provide your reasoning.

Article 33(6)(c) – Dedicated Interface has been widely used

54. The third condition is that the dedicated interface has been ‘widely used for at least three months by payment service providers to offer account information services, payment initiation services and to provide confirmation on the availability of funds for card-based payments’.
55. The EBA assessed the potential interpretations of Article 33(6)(c) and arrived at the view that it is likely to be challenging for CAs to assess whether a dedicated interface has been ‘widely used’, in particular in the period leading up to September 2019 during which the RTS is not yet applicable and ASPSPs are not required yet to have an API implemented, as wide usage implies that the PISP, AISP and CBPII interaction has moved from the testing phase to live market use supporting real

² <https://www.europeanpaymentscouncil.eu/document-library/other/terms-reference-application-programming-interface-evaluation-group-api-eg>

PSUs, not simply testing via dummy accounts or volunteer PSUs. In practice, the exemption may be assessed at a time likely to overlap with the advanced testing phase.

56. The EBA also considered that the delay in implementation of PSD2 in a number of Member States will also mean that the requirement will need to be assessed at a time when new actors are entering the market and so there are likely to be practical difficulties to show that a dedicated interface is 'widely used'.
57. The EBA would remind CAs that credit institutions that are also undertaking payment initiation, account information and card based payment instrument issuing should be included in the assessment of 'widely used'.
58. The EBA considered and discounted numerical measurements of 'wide usage' like market share of the AISP/PISP/CBPII or number of firms using a dedicated interface number for the provision of AIS/PIS or CBPII as a proportion of the number of firms authorised to provide such services in a Member State because the EBA acknowledges that there is no obligation on AISPs/PISPs or CBPIIs to undertake testing; that smaller firms may find it difficult to test with multiple providers all at the same time; that firms not satisfied with the 'design' of the dedicated interface may decide not to test and that the timelines for testing and wide usage may need to run concurrently.
59. The EBA is of the view that for CAs to be able to assess this condition, in particular, pre September 2019 they will also have to consider what steps an ASPSP has taken to publicise and encourage testing and use of a dedicated interface as well as practical usage. This is proposed in Guideline 7.

Question 6: Do you agree with the EBA's assessment for 'widely used', the options it considered and discarded, and the requirements proposed Guideline 7? If not, please provide your reasoning.

Article 33(6)(d) - Resolution of Problems

60. The fourth condition is that "any problems related to the dedicated interface have been resolved without undue delay". The EBA assessed the potential interpretations of this requirement and arrived at a view that, this condition, too, needs to be seen in the context of PSD2, the RTS, and Article 33 and is therefore also to be seen in the context of testing. More specifically, the condition applies during the time period when testing is being undertaken and testing in itself is a mechanism intended to identify problems for the very purpose of resolving problems before a live market launch. It is difficult to determine what more an ASPSP needs to show in addition to making the testing facility available and resolve issues identified during the testing to meet this condition.
61. Therefore the EBA came to the view that the ASPSP must have in place a mechanism to identify and log problems and that the problems have been resolved in accordance with the service level

targets and support in place as per Guideline 2 and the contingency measures as required by Article 33(1).

62. The condition makes no distinction between large and small problems and as service level targets and support for the resolution of technical problems are generally categorised for resolution according to severity (and as many hundreds of problems can arise in a testing environment) the EBA has come to the view that ASPSP will need to provide to the CA statistical data on how many problems occurred within different severity categories and identify what percentage, if any, were not dealt with within the service level targets. This information will provide CA with the necessary information to determine if problems have been resolved without undue delay given that the CA will also be in possession of confirmations that the service level objectives and targets and support for the dedicated interface are as stringent as those for the PSU interface. This is what the EBA is proposing in Guideline 8.
63. The EBA considered and discounted complaints data as a reliable indicator of issues being resolved in a timely manner because complaints and the number of complaints are not a reliable indicator that problems have been resolved without undue delay.

Question 7: Do you agree with the EBA's assessment to use the service level targets and statistical data for the assessment of resolving problems without undue delay, the options it discarded, and the requirements proposed Guideline 8? If not, please provide your reasoning.

Article 33(6) - Consultation with the EBA

64. Article 33(6) requires that CAs exempt firms from the fall back 'after consultation' with the EBA. This is to ensure a consistent application of the four conditions for exemption. The format in which a CA requires information from the ASPSP is a decision for the CA to take; whether the CA will require audit reports from the ASPSP or other supporting information on which to determine its exemption assessment. The role of the EBA is to contribute to the consistent application of the exemption conditions and to highlight and address divergent approaches between CAs.
65. The EBA has assessed the potential interpretation of this requirement and arrived at the view that, as a general rule, CAs are expected to submit to the EBA the Assessment Form set out in Annex 1 for each request for exemption that they intend to grant. The EBA acknowledges that this process should not unduly delay the assessment process for each CA and has therefore reached the view that in the event that CAs have not received any comments from the EBA one month from the date CAs submitted the form to the EBA, CAs can consider that the consultation has taken place. This is detailed in Guideline 9.1.
66. However, for the period until 31 December 2019, and given the large number of requests for assessments that are expected to be needed as well as market expectations of an expedient

processing of applications for exemption, the EBA reached the view that the procedure of consultation should be pragmatic and enable the CAs and EBA to manage the large volumes of requests expected. Therefore, during that period, the requirement for CAs to consult is considered to be satisfied by CAs having *informed* the EBA of their intention to grant an exemption by submitting the form set out in Annex 1, and provided that they have submitted a notification of compliance to the EBA guidelines. In this case the requirement to consult will *not* include CAs having to

- a. submit a form in Annex 1 on a case-by-case basis, as they can instead submit the form covering more than one ASPSPs, and
- b. wait for any comments from the EBA or for the one month period referred to in guideline 9.1 to pass.

67. The above is detailed in Guideline 9.3.

68. The EBA is also of the view that a consistent application of the conditions that result in a refusal for exemption is equally as important for supervisory convergence as adherence to the conditions for granting an exemption. In order to meet the objectives of the RTS and the EBA's objective of supervisory convergence, Guideline 9.2 provides that CAs that deny an application for exemption should submit the Assessment Form provided in the Annex to the Guidelines outlining the rationale for the refusal.

Question 8: Do you agree with the proposed Guideline 9 and the information submitted to the EBA in the Assessment Form in the Annex? If not, please provide your reasoning.

Timing

69. In terms of timing, the RTS requires that, in order to be able to benefit from the exemption, ASPSPs that intend to provide a dedicated interface before September 2019 must make the documentation and testing facilities available to AISPs, PISPs and CBPII no later than 14 March 2019, i.e., six months before the date of application of the RTS in September 2019.

70. The approach proposed in these Guidelines is deliberately pragmatic in nature, in order for the CAs and the EBA to be able to carry-out the large number of assessments that are expected be needed in the short period leading up to the September 2019 deadline, while providing clarity to ASPSPs seeking an exemption on the evidential requirements placed on them to assist CAs in assessing a request for exemption.

71. However the EBA encourages all actors to engage as early as possible with the process and in particular to provide the technical specifications and testing facilities well before the March 2019 deadline to ensure that all actors are providing access to and accessing payment accounts in a

manner compliant with PSD2 and the RTS by 14 September 2019, including in order to allow time for the CA to assess the request for exemption.

72. The EBA foresees that given the pace of change in the payments market, wider acceptance of the new services and dedicated interfaces becoming a more familiar feature of the payments landscape it may need to consider a review of these Guidelines sooner than the normal 2-3 year review cycle.

Question 9: Do you have any particular concerns regarding the envisaged timelines for ASPSPs to meet the requirements set out in these Guidelines prior to the September 2019 deadline, including providing the technical specifications and testing facilities in advance of the March 2019 deadline?

Question 10: Do you agree with the level of detail set out in the draft Guidelines as proposed in this Consultation Paper or would you have expected either more or less detailed requirements on a particular aspect? Please provide your reasoning.

5. Draft Guidelines

on the conditions to be met to benefit from an exemption from contingency measures under Article 33(6) of Regulation (EU) 2018/389 (RTS on SCA & CSC)

1. Compliance and reporting obligations

Status of these guidelines

73. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010³. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
74. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

75. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance
76. , by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
77. Notifications will be published on the EBA website, in line with Article 16(3).

³ 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).

2. Subject matter, scope and definitions

Subject matter

These guidelines specify the conditions, set out in Article 33(6) of the Commission Delegated Regulation (EU) 2018/389⁴ (the RTS), to exempt the account payment service providers that have opted for a dedicated interface from the obligation to set up the contingency mechanism described under Article 33(4) of the RTS.

These guidelines further provide guidance on how competent authorities consult EBA for the purposes of the exemption in accordance with Article 33(6) of the RTS.

Scope of application

These guidelines apply in relation to the contingency measures for a dedicated interface set out in Article 33 of the RTS and in particular to the exemption from the obligation to set up a contingency mechanism in accordance with Article 33(4) of the RTS.

Addressees

These Guidelines are addressed to competent authorities as defined in point (i) of Article 4(2) of Regulation (EU) 1093/2010 and to PSPs as defined in Article 4(11) of Directive (EU) 2015/2366 (PSD2)⁵.

Definitions

Unless otherwise specified, terms used and defined in PSD2 and in the RTS have the same meaning in these Guidelines.

3. Implementation

Date of application

These guidelines apply from 01.01.2019

⁴ Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication, OJ, L 69/23 (13.3.2018).

⁵ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU No 1093/2010, and repealing 2007/64/EC, OJ L 337/36, (23/12/2015).



4. Guidelines

Guideline 1: Fulfilment of the conditions set out in Article 33(6) of Delegated Regulation (EU) 2018/389

- 1.1. Competent authorities should assess an account servicing payment service provider (ASPSP) as having fulfilled the four conditions set out in Article 33(6) of Regulation (EU) 2018/89⁶ (RTS) where the ASPSP is compliant with the requirements set out in Guidelines 2 to 8.
- 1.2. ASPSPs should provide to competent authorities such information as is necessary to satisfy to the competent authority that the requirements in Guidelines 2 to 8 are met.

Guideline 2: Service level, availability and performance

- 2.1. The ASPSP should have in place the same service level objectives and targets, out of hours support, monitoring and contingency plans as it has in place for the interface(s) used by its own payment service users.
- 2.2. The ASPSP should have at a minimum, the following key performance indicators of the availability of the dedicated interface as well as each of the interface used by its payment service users (PSU):
 - a. the uptime of all interfaces;
 - b. the downtime of all interfaces (planned);
 - c. the downtime of all interfaces (unplanned);
- 2.3. The ASPSP should have in place at a minimum, the following indicators for the performance of the dedicated interface:
 - a. the time taken for the ASPSP to provide to the payment initiation service provider (PISP) all information on the initiation of the payment transaction as required by Article 66(4)(b) of Directive(EU) 2015/2366⁷ (PSD2) and by Article 36(1)(b) of the RTS;
 - b. the time taken for the ASPSP to provide to the account information service provider (AISP) all payment related data as required by Article 36(1)(a) of the RTS;
 - c. the time taken for the ASPSP to provide to the card based payment instrument issuer (CBPII) and PISP a yes/no message as required by Article 65(3) of PSD2 and by Article 36(1)(c) of the RTS.
- 2.4. For the purpose of calculating the values of the indicators set out in Guideline 2.2 for the dedicated interface, the ASPSP should:

⁶ COMMISSION DELEGATED REGULATION (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication, published on 13 March 2018 at the Official Journal of the European Union, L 69/23 to L 69/43

⁷ DIRECTIVE (EU) 2015/2366 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC published at the Official Journal of the European Union on 23 December 2015, L 337/35 to L 337/127

- a. calculate the percentage planned and unplanned downtime by using the total number of seconds the dedicated interface was down in a 24 hour period starting and ending at midnight;
- b. count the interface as 'down' when the conditions in Article 33(1) of the RTS are met, that is: when five consecutive requests for access to information for the provision of payment initiation services or account information services are not replied to within 30 seconds; and
- c. calculate the percentage Uptime as 100% minus the percentage downtime.

Guideline 3: Publication of Indicators

- 3.1 For the purpose of Article 32(4) of the RTS, the ASPSP should provide to its competent authority a plan for publication of:
- a. daily statistics on a quarterly basis on availability and performance as set out in Guideline 2.2 and 2.3 for the dedicated interface and each payment service user interface together with information on where these statistics will be published and the date of first publication; and
 - b. from the date of first publication publish the comparison of the availability of its dedicated interface with its best-performing PSU interface.

Guideline 4: Stress Testing

- 4.1 For the purpose of the stress-tests referred to in Article 32(2) of the RTS, the ASPSP should have in place processes to establish and assess how the dedicated interface performs when subjected to an extremely high number of requests from PISPs and AISPs, in terms of the impact that such stresses have on the availability and performance of the dedicated interface.
- 4.2 The ASPSP should undertake adequate stress testing of the dedicated interface including but not limited to:
- a. the capability to support access by multiple firms;
 - b. the capability of the dedicated interface to deal with unusually high numbers of requests, from PISPs, AISPs and CBPIIs, in a short period of time without failing;
 - c. the use of an extremely high number of concurrent sessions open at the same time for payment initiation and account information requests; and
 - d. requests for large volumes of data.
- 4.3 The ASPSP should provide to the competent authority a summary of the result of the stress testing, including any weaknesses or issues identified and confirmation that these have been addressed.

Guideline 5: Obstacles

5.1 In addition to the requirements set out in Articles 65, 66, 67 and 97 PSD2 and in the RTS, the ASPSP should provide to the competent authority:

- a. a summary of the methods of access chosen by the ASPSP; and
- b. where the ASPSP has put in place only one method of access, an explanation of the reasons why this method of access is not an obstacle as referred to in Article 32(3) of the RTS and how this method of access supports all authentication methods provided by the ASPSP to its PSU.

5.2 The ASPSP should provide to the competent authority a confirmation that:

- a. the dedicated interface does not prevent PISPs and AISPs from relying upon the security credentials issued by the ASPSP;
- b. PISPs, AISPs and CBPIIs do not have to comply with any different or additional requirements, other than those imposed by legislation, that are not equally imposed on all other types of payment service providers (PSPs);
- c. there are no additional checks on the consent given by the PSU to the PISP, AISP or CBPII to access the information of the payment account held in the ASPSP or initiate payments; and
- d. the IT solution for the dedicated interface and its implementation do not give rise to unnecessary delay, friction or any other attributes that would mean that payment service users are directly or indirectly dissuaded from using the services of PISPs, AISPs and CBPIIs.

Guideline 6: Design and testing to the satisfaction of PSPs

6.1 For the purposes of letter (b) of Article 33(6) of the RTS, the ASPSP should make available to PISPs, AISPs and CBPIIs the technical specifications for the dedicated interface in accordance with Article 30(3) of the RTS including, at a minimum, the following:

- a. publish a summary of the specification of the dedicated interface on its website in accordance with the third sub-paragraph of Article 30(3) of the RTS;
- b. make available a testing facility for the dedicated interface in accordance with Article 30(5) of the RTS;

6.2 The testing facility prior to live usage should allow PISPs, AISPs and CBPIIs to test the dedicated interface for the following :

- a. a stable and secure connection;
- b. the ability to exchange qualified certificates for electronic seals and qualified web authentication certificates referred to in Article 34 of the RTS;

- c. the ability to send and receive error messages in accordance with Article 36(2) of the RTS;
 - d. the ability for ASPSPs to receive payment initiation orders and to provide all information on the initiation of the payment transaction as required by Article 66(4)(b) of PSD2 and Article 36(1)(b) of the RTS;
 - e. the ability for ASPSPs to receive data requests and to send the requested data in relation to designated payment accounts and associated payment transactions made available to the PSU as required by Article 36(1)(a) of the RTS; and
 - f. the ability for ASPSPs to receive requests from CBPIIs and to send the requisite yes/no confirmation as required by Article 65(3) of PSD2 and by Article 36(1)(c) of the RTS to CBPIIs and PISPs.
- 6.3 The ASPSP should provide to the competent authority a summary of the results of the testing for the above, including the identification of weaknesses and a description of how these weaknesses have been addressed.
- 6.4 Where an ASPSP is implementing a market initiative standard, it should provide the competent authority with information as to:
- a. which standard the ASPSP is implementing; and
 - b. whether, and if so how and why, it has deviated from any standard implementation requirements of the initiative, if available.
- 6.5 Where an ASPSP is not implementing a market initiative standard, it should provide the competent authority with a description as to the form of engagement that has taken place with PISPs, AISPs and CBPIIs for implementing the dedicated interface.

Guideline 7: Wide usage of the interface

- 7.1 The ASPSP should provide to the competent authority a summary as to the availability of the technical specification and testing facility to the market and should have taken all necessary steps for the interface to be operationally used. The information should include, but is not limited to
- a. the total number of PISPs, CBPIIs, AISPs that have or have applied for the relevant authorisation that have made use of the testing facility; and
 - b. the number of AISPs, PISPs and CBPIIs using the interface.
- 7.2 If the ASPSP is not able to evidence fulfilment with the condition of 'widely used' as set out in Guideline 7.1, the ASPSP should provide evidence to the competent authority that it has made the interface public and available for 'wide usage' by communicating the availability of the testing facilities via appropriate channels, including where appropriate the website of the ASPSP, social media, industry trade bodies, conferences and direct engagement with known market actors.

7.3 The three-month period referred to in Article 33(6)(c) RTS may be included within the 6-month testing period referred to in Article 30(5) RTS

Guideline 8: Resolution of problems

8.1 For the purpose of Article 32(1) and Article 33(6)(d), the ASPSP should provide to the competent authority:

- a. information on the systems or procedures in place for tracking, resolving and closing problems, including those reported by PISPs, AISPs and CBPIIs; and
- b. an explanation of the problems that have not been resolved without undue delay in accordance with the service level targets and support detailed in Guideline 2.

Guideline 9: Consultation with the EBA

9.1 When consulting the EBA in accordance with Article 33(6) of the RTS, competent authorities should submit to the EBA the Assessment Form set out in Annex 1 in relation to each request for an exemption that they intend to grant. Competent authorities should not take any decision in relation to the exemption until the earlier of receiving the EBA's comments on the request, or one month from the date that the competent authority consulted the EBA. Competent authorities should take due account of the EBA's comments when taking any decision on the request.

9.2 Competent authorities that have refused to exempt an ASPSP from the obligation to set up the contingency mechanism referred to in Article 33(4) of the RTS because its dedicated interface does not comply with the conditions set out in Article 33(6) of the RTS and with the requirements of Guideline 2 to 8, should submit to the EBA the Assessment Form detailed in Annex 1. The negative assessment should be provided for all denied requests to grant an exemption in accordance with Article 33(6) of the RTS.

9.3 In derogation from paragraph 9.1, until 31 December 2019, competent authorities which have notified the EBA that they comply with these guidelines can proceed to grant an exemption provided that competent authorities have consulted the EBA by informing it of their intention to grant the exemption to one or more ASPSPs using the Assessment Form set out in Annex 1.

Annex 1: Assessment Form

Assessment Submission

1)	Member State	
2)	Name of the competent authorities in the Member State	
3)	Contact person within competent authorities	
4)	Date of submission to EBA	DD/MM/YY
5)	Name(s) of the account servicing payment service provider(s) and its (their respective) unique identification number as shown in the relevant national register for credit institutions, payment institutions and e-money institutions.	
6)	Type(s) of account servicing payment service provider(s)	<input type="checkbox"/> Credit Institution <input type="checkbox"/> Payment Institution <input type="checkbox"/> E-Money Institution
7)	If applicable, rationale for refusal to grant an exemption	

6. Accompanying documents

6.1 Cost-benefit analysis/impact assessment

Introduction

Article 16(2) of the EBA Regulation⁸ provides that the EBA should carry out an analysis of ‘the related potential costs and benefits’ of any guidelines it develops. This analysis should provide an overview of the findings regarding the problem to be dealt with, the options identified to remove the problem and their potential impacts.

This section presents the Impact Assessment (IA) with cost-benefit analysis of the provisions included in the Guidelines described in this Consultation Paper. Given the nature of the study, the IA is high-level and qualitative in nature.

Problem identification and baseline scenario

Article 33(6) of the RTS for strong customer authentication and common and secure open standards of communication, sets out the conditions that must be met by an ASPSP, which has opted for a dedicated interface, to benefit from an exemption to set up contingency measures. However, these conditions are stated in relatively high-level terms and may be subject to different interpretations and outcomes across Member States. In addition, the timeline is tight for ASPSPs that intend to request an exemption before the RTS apply in September 2019.

Under the baseline scenario – the status quo – CAs, after consulting with the EBA (in line with the requirement under Article 33(6)), can exempt APSPs on an ASPSP-per-ASPSP basis from the requirement to set up contingency measures if they satisfy the conditions under Article 33(6). Without the use of these draft Guidelines on how to interpret and assess these conditions, CAs might consider different criteria when determining whether or not an ASPSP qualifies for the exemption foreseen in the RTS and would need to consult the EBA for each ASPSP. In return, this could be time consuming and recourse intensive for EBA to assess the consistent implementation of the conditions across the EU for each ASPSP, delaying the exemption assessment for an exemption.

Lack of common and consistent application of the four criteria under Article 33(6) RTS can lead to a number of problems, including:

- Uneven playing field for payment services providers in the EU; for example two ASPSPs with similar dedicated interfaces located in different Member States may be subject to different

⁸ 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

regulatory treatment – e.g. one benefiting from the exemption and the other not - if the conditions are not consistently assessed across Member States;

- Lack of level playing field leading to distortions to the competition in the EU internal market for payment accounts due to unharmonised application of the regulatory rules;
- Regulatory arbitrage, i.e. APSPs may cease their operations in Member States where the regulatory framework is stricter and/or less predictable and relocate to Member States with more favourable regulatory frameworks;
- Differing levels of consumer protection for EU citizens due to inconsistent application of regulatory rules in different Member States;
- Increased uncertainty and potential costs for APSPs for developing the dedicated interface due to lack of transparency surrounding the interpretation of the conditions for benefiting from the exemption; and
- Additional operational burden for cross-border groups due to different treatment of various entities belonging to the same group as a result of different supervisory practices.

Overall, such problems may hamper the effective and efficient functioning of the EU-wide single market for payments.

Policy objectives

The main objective of these draft Guidelines is to ensure a common, uniform and consistent implementation of the criteria to assess whether or not to grant an exemption from the obligation to have a fallback mechanism in place under Article 33(6) RTS.

More specifically, these draft Guidelines aim to ensure a level playing field across Member States, by establishing harmonised supervisory practices regarding the interpretation and assessment of the aforementioned conditions. Common supervisory practices are also expected to facilitate cooperation between the competent authorities with regard to cross-border groups. The draft Guidelines further aim to improve transparency and comparability, by providing explanations, clarifications and examples on how the relevant exemption requirements should be fulfilled.

Operationally, the draft Guidelines are drafted considering the tight timeline for APSPs to meet all the necessary requirements for obtaining an exemption. They seek to help APSPs to improve their implementation of these requirements and practically assist CAs in assessing a request for exemption. They also aim to mitigate the time burden of CAs and EBA interaction and provide a practical solution for CAs in meeting their own obligation to consult with the EBA before granting the exemption.

In general, the draft Guidelines aim to promote a more integrated and efficient European payments market, in line with the objectives of PSD2. They also contribute to the EBA objectives of enhancing regulatory and supervisory convergence, and protecting users of payment services in the EU.

Options considered and cost benefit analysis

The Guidelines will affect primarily CAs and APSPs as well as other related parties, including payment service providers that make use of the dedicated interface. In light of the main objectives of these draft Guidelines, the following assessment aims to explaining the costs and benefits of the available options considered.

General

Option 1a: Status quo (i.e. no intervention)

Option 1b: Issuing the Guidelines

Under Option 1a, CAs will need to develop a national assessment procedure for exempting ASPSP from contingency measures according to the conditions set out in Article 33(6). This may create an inconsistent application of the exemption conditions across EU and distort competition. It can also lead to uncertainty amongst payment system providers and a lack of confidence in the consistency of exemption decisions.

Under Option 1b, the draft Guidelines will provide CAs with common set of criteria for assessing the exemption from contingency measures under Article 33(6). Harmonisation of the assessment criteria would bring several benefits. It will ensure a level playing field, minimise the risk of regulatory arbitrage and contribute to providing consistency across EU member states. In return, this will support the growth of cross-border payment services and foster the development of a more efficient, competitive and integrated EU payment services market.

Providing more clarity regarding the assessment criteria can also increase transparency and legal certainty for payment service providers, ultimately contributing in enhancing the confidence in the EU payments market and facilitating sufficient protection of consumers. In addition, it can reduce the administrative burden for both CAs and payment service providers, allowing for better resource allocation.

On the other hand, the implementation of these Guidelines would imply compliance costs for both, competent authorities and payment service providers. It is reasonable to assume that most of the costs will be one-off costs mainly referring to the set-up of a new assessment process. However, competent authorities will have experienced similar costs, even in the absence of the guidelines, in order to fulfil their obligations under Article 33(6). The incremental costs of implementing the Guidelines, are thus expected to be minimal.

In conclusion, the benefits of the draft Guidelines are expected to be higher than the costs that both competent authorities and payment service providers could face.

Option 1b is retained.

EBA consultation

Option 2a: Consultation on a firm-by-firm basis with EBA comments (or one month period).

Option 2b: Consultation only for complex cases CAs wish to discuss with the EBA.

Option 2c: Consultation by informing the EBA of the intention to grant an exemption for one or more ASPSPs.

Option 2a reflects the general rule in which the EBA would fulfill its consultation requirement, with an obligation for CAs to notify for each request received for exemption that they intend to grant, in addition to compliance with the guidelines. Such consultation would enable the EBA to determine whether the application of the conditions is consistent between CAs. Such an approach should therefore be preferred under normal circumstances. CAs are expected to incur one-off costs for setting up the process, as well as on-going costs for providing the relevant information to EBA on a firm-by-firm basis.

Given the large number of requests for assessments that are expected to be needed as well as market expectations of an expedient processing of applications for exemption, the EBA has considered two alternative options, adopting a pragmatic approach.

Under Option 2b, provided that CAs have submitted a compliance notification to the EBA, consultation may only take place where CA would like to discuss a complex case or in the event that the CA has rejected an exemption. This approach allows for CAs to have flexibility. However, this would not enable the EBA to have any visibility or information on all the ASPSPs for which any CA intends to grant an exemption. This would therefore be difficult in this case for the EBA to identify whether the conditions are applied in a convergent manner between CAs. For that reason, the EBA has concluded that this would not meet the consultation requirements required under Article 33(6) of the. This option has been discarded.

Under option 2c, provided that CAs have submitted a compliance notification to the EBA, CAs would comply with its requirement to notify the EBA by informing the EBA of their intention to grant an exemption for ASPSP, including for more than one ASPSP at any given time. CAs would not need to wait for comments from the EBA or the one-month period to have lapsed. CAs would also be able to provide a notification for more than one ASPSP at any one time, which would alleviate the burden for ASPSPs and enable CAs and EBA to satisfactorily manage the high volumes of request anticipated. This would enable the EBA to have an overall view of the exemptions being granted and take a view on the consistency of application of the guidelines. CAs are expected to incur one-off costs for implementing the draft Guidelines with limited on-going costs for interacting with EBA.

Option 2a is retained as the general applicable rule and the pragmatic option 2c is retained as a derogation to the principle until 31 December 2019 to satisfactorily manage the large expected volumes.

6.2 Overview of questions for consultation

Q1: Do you agree with the EBA's assessments on KPIs and the calculation of uptime and downtime and the ASPSP submission of a plan to publishing statistics, the options that EBA considered and progressed or discarded, and the requirements proposed in Guideline 2 and 3? If not, please provide detail on other KPIs or calculation methods that you consider more suitable and your reasoning for doing so.

Q2: Do you agree with the EBA's assessments on stress testing and the options it considered and progressed or discarded, and the requirements proposed in Guideline 4? If not, please provide your reasoning.

Q3: Do you agree with the EBA's assessments on monitoring? If not, please provide your reasoning.

Q4: Do you agree with the EBA's assessments on obstacles, the options it considered and progressed or discarded, and the requirements proposed in Guideline 5? If not, please provide your reasoning.

Q5: Do you agree with the EBA's assessments for design and testing, the options it considered and progressed or discarded, and the requirements proposed Guideline 6? If not, please provide your reasoning.

Q6: Do you agree with the EBA's assessment for 'widely used', the options it considered and discarded, and the requirements proposed Guideline 7? If not, please provide your reasoning.

Q7: Do you agree with the EBAs assessment to use the service level targets and statistical data for the assessment of resolving problems without undue delay, the options it discarded, and the requirements proposed Guideline 8? If not, please provide your reasoning.

Q8: Do you agree with the proposed Guideline 9 and the information submitted to the EBA in the Assessment Form in the Annex? If not, please provide your reasoning.

Q9: Do you have any particular concerns regarding the envisaged timelines for ASPSPs to meet the requirements set out in these Guidelines prior to the September 2019 deadline, including providing the technical specifications and testing facilities in advance of the March 2019 deadline?

Q10: Do you agree with the level of detail set out in the draft Guidelines as proposed in this Consultation Paper or would you have expected either more or less detailed requirements on a particular aspect? Please provide your reasoning.