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1 February 2019

Subject: Your letter dated 18 December 2018 on the implementation of the revised Payment Services Directive (PSD2)

Dear Mr Ferber,

Thank you for your letter dated 18 December 2018 on the implementation of the Payment Services Directive (PSD2). In the letter, you raise questions about certain elements of the 'level 3 guidance' that the EBA has provided in respect of the Regulatory Technical Standards on strong Customer Authentication and Common and Secure Communication (RTS on SCA&CSC) as published as Delegated Regulation [Delegated Regulation 2018/389](#). We assume this to be a reference primarily to the EBA Guidelines on the conditions to benefit from an exemption the contingency mechanism under Article 33(6) of the EC Delegated Regulation 2018/389 ([EBA/GL/2018/07](#)), but also to some other publications the EBA has issued in response to requests for clarification, such as the EBA Opinion on the implementation of the RTS ([EBA/OP/2018/04](#)).

Your letter suggests that the EBA has 'shifted significantly towards banks' the balance that had been found in the Delegated Regulation. You consider that the final Guidelines are an improvement from the draft Guidelines the EBA had published for consultation earlier in 2018 but you remain concerned about three issues: redirection, fraud prevention and the white-listing of trusted beneficiaries.

Before addressing each of these concerns, allow me to explain why the EBA had to issue the aforementioned Guidelines. As you will recall, the final version of the RTS that were eventually published as a delegated regulation in the Official Journal of the EU in March 2018 contained several amendments to the draft that the EBA had originally submitted.

In particular, the new Article 33(6) of the delegated regulation set out the conditions that must be met by an ASPSP that wishes to provide access via a dedicated interface in order to be exempted

from the obligation to implement the contingency mechanism (fall back) as defined in Article 33(4) of the RTS. The EBA assessed these amendments jointly with the 28 national authorities and identified a number of components that were unclear and therefore at risk of being interpreted very differently across the 28 EU Member States, thus undermining the objective of PSD2 of bringing about a single EU payments market. In particular, it was unclear as to how, during their assessment of the exemption applications, the 28 national authorities were meant to apply the four criteria that the delegated regulation had introduced. It was also unclear as to how NCAs would complete such assessments for potentially up to 6,000 different ASPSPs, within only six months, and “in consultation with the EBA to ensure consistency in the application of the conditions for the exemptions.”

In order to fulfil the new task of ensuring a uniform application of such a scale and in such a compressed timeline, the EBA decided to issue Guidelines to clarify how national authorities should apply the conditions for the exemptions. In the process, the EBA had to make difficult trade-offs between what are at times competing objectives of the Directive, such as enhancing competition, facilitating innovation, enhancing customer convenience, increasing security, bringing about a single EU payments market, and doing all this in a way that is business model and technology-neutral.

In order to help us finding the most suitable balance, and akin to all other legal instruments published by the EBA, we consulted external stakeholders and, in addition, invited 20 or so third party providers (TPPs) to the EBA’s premises to discuss the draft Guidelines with us. As a result, the EBA made significant changes to the Guidelines before it published the final version. For example, the Guidelines now give the TPPs the opportunity to be involved in the exemption process and to provide national authorities with feedback regarding the ASPSPs’ interfaces. Furthermore, the Guidelines now require ASPSPs to measure the so-called error response rates as an additional performance indicator and to publish data regarding the availability and performance of their APIs.

Allow me now to turn to the three specific points you raise in your letter regarding redirection, the sharing of data on the identity of the payer, and the amendment of trusted beneficiaries’ lists.

Redirection

Redirection is a particular variant of third party account access during which customers, when paying for goods and services online by credit transfer, are redirected to the website of their Account Servicing Payment Service Provider (ASPSP) to enter their credentials for authentication. It is an access variant used by many customers and TPPs in a number of markets in the EU.

Issues around this particular market practice were debated in some industry fora in 2017 and 2018. Following a number of related clarification requests that the EBA had received from market participants and national authorities, and having consulted with the EU Commission, we clarified in an EBA Opinion issued in June 2018 that redirection *in itself* is not an obstacle to the provision of account information services (AIS) or payment initiation services (PIS). However, we also clarified

that redirection *may* be an obstacle if the ASPSP implements redirection in a manner that results in delays in the transaction or friction in the customer experience that would dissuade the customer from using the services.

The Guidelines reiterate this position in Guideline 5 and clarify that such a scenario would constitute an obstacle under Article 32(3) of the delegated regulation. The Guidelines also require ASPSPs to evidence to their NCA that their dedicated interface does not give rise to such an obstacle and, on pages 73 to 76 of the feedback table, provide detailed responses to some related questions that consultation respondents had asked about this topic.

Sharing of data on the identity of the payment service user

The second point that you raise regarding the sharing of data on the identity of the PSU, too, was debated in the industry fora amongst some market participants in 2017 and 2018. In the process, the EBA received a number of queries in relation to the provisions in Articles 36(1)(b) and (c) of the delegated regulation in particular. These Articles require ASPSPs to provide PIS providers “with the same information on the initiation and execution of the payment transaction provided or made available to the payment service user”. They also require ASPSPs to “provide immediate confirmation of whether or not there are funds available at the provider’s request, in a ‘yes or no’ format”.

The queries related to a number of different aspects of the delegated regulation but included the question as to whether ASPSPs were required to share identity data of the payer, such as their address, date of birth and social security number. In the EBA’s response, we referred to the constraints provided in Article 66(3)(f) of the Directive, which states that PIS providers shall “not request from the payment service user any data other than those necessary to provide the payment initiation service”. We also referred the industry to Article 66(3)(g), which requires that PIS providers “shall not use, access or store any data for purposes other than for the provision of the payment initiation service as explicitly requested by the payer”. As a result, and given that address, date of birth and social security number are not data that is required for initiating a payment, we clarified that ASPSPs are not required to share such data under the delegated regulation or the PSD2.

While external stakeholders have found this clarification helpful, we acknowledge that we have recently received a follow-up question via the EBA’s Q&A tool on the interpretation of the Directive in this regard. In line with the EBA’s procedure that governs its Q&A process, questions about the interpretation of Level-1 text are answered, not by the EBA but by the EU Commission.

In this particular instance, the EU Commission recently provided clarification in [Q&A 2018 4081](#) that ASPSPs should “cater for the possibility in the access interface [...] to provide or make available the name of the payer/ payment account holder in order not to create obstacles for PISPs and AISP, if the latter can justify to the NCA that the name is necessary for the provision of their services”.

As further clarified by the Commission in the same answer, the fact that the name of the account owner does not constitute sensitive payment data under PSD2 “is not relevant for the question whether the ASPSP can or shall provide the name of an account holder”, and “only has as a consequence that Article 66 (3)(e) PSD2 and Article 67 (2)(e) PSD2 on requesting and storing sensitive payment data do not apply”.

Trusted beneficiary lists

The third point you raise is in respect of the question whether TPPs should have the possibility to add new payees to the trusted beneficiaries list of a payer. This issue has also been raised with the EBA, primarily through [Q&A 2018_4076](#) and [2018_4128](#), the answers to which have recently been published by the EBA.

In Q&A 2018_4076, the Commission clarified that Article 13(1) of the delegated regulation provides that, for the purpose of the exemption to SCA, a payer can create or amend a list of trusted beneficiaries only through its ASPSP, and not through the services of a PISP or an AISP. Accordingly, a list that has been amended by an AIS or PIS provider would not meet the requirement for this exemption and we added that this does of course not preclude the user from adding the respective payee to the trusted beneficiaries via its ASPSP interface.

In Q&A 2018_4128, the EU Commission confirmed that “the information as to whether or not a payee is on the list of trusted beneficiaries is not necessary for the provision of the PIS”, given that “it is ultimately the ASPSP that applies strong customer authentication (SCA) or decides whether or not to apply an exemption, including the exemption on trusted beneficiaries as stated in Article 13 of the Commission Delegated Regulation (EU) 2018/389”. The EU Commission also confirmed that “the beneficiary list [...] can only be changed or amended by the PSU in the ASPSPs domain. It follows that no suggestions for new entries or amendments are allowed to be made by PSPs to the PSU’s list of trusted beneficiaries within the ASPSPs domain, but ASPSPs can design their banking environment in such a way that it would be easy for a PSU to add a new trusted beneficiary to its own list within the ASPSPs domain”.

By way of concluding, I would like to emphasize that the issue of balance and neutrality is very important to the EBA, and so is the objective of the Directive to open the payments market to a wide range of participants. To this end, we hope that the explanations provided above demonstrate that the EBA has retained the balance of the delegated regulation, has operated within its mandate and within the Directive in the most plausible way, and has added value by bringing about much-needed clarity that contributes to a consistent implementation across the EU of the Directive and the delegated regulation.

We also take comfort from the fact that, despite a large number of Member States being late in transposing the Directive, national authorities have so far authorized around 200 legal entities for

the provision of AIS or PIS services under PSD2, suggesting that the objectives of the Directive are in the process of materializing. With the planned go-live of the central electronic register of the EBA in February 2019, the EBA will be able to monitor the evolution of this particular aspect of the market more regularly and with greater granularity. We would be happy to provide you with updated figures at a later stage should you so wish.

Furthermore, we are mindful that the period leading up to the application date of the regulation on 14 September 2019 will be challenging, as national authorities will be assessing the exemption applications of thousands of ASPSPs, ASPSPs will be required to make testing facilities and live production interfaces available, and TPPs will expect high-performing interfaces that offer seamless customer journeys.

The EBA has therefore decided to set up a working group on APIs under PSD2, with the aim of market participants, and TPPs in particular, to raise issues any issues that may arise in 2019 regarding the development of the interfaces and to discuss potential solutions to it. To that end, we issued a call for expressions of interest before Christmas and subsequently received 165 applications from external stakeholders, which we are currently assessing. The group will consist of an equal number of TPPs and ASPSPs and, in so doing, continue our efforts to achieve a balanced approach to the implementation of the Directive.

We hope these explanations will prove useful and remain available should you require any further information.

Yours sincerely,

[signed]

Jo Swyngedouw
EBA Interim Chairperson