

EBA/Op/2021/02

18 February 2021

Opinion of the European Banking Authority on supervisory actions to ensure the removal of obstacles to account access under PSD2

Introduction and legal basis

1. The competence of the European Banking Authority (EBA) to deliver this opinion is based on Article 29(1)(a) of Regulation (EU) No 1093/2010¹ as part of the EBA's objective to 'play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union'.
2. In June 2020, the EBA published an Opinion on obstacles under Article 32(3) of the RTS on SCA and CSC (EBA/OP/2020/10)², which provided clarifications on practices by account servicing payment providers (ASPSPs) that are obstacles to account access under Directive (EU) 2015/2366 (PSD2) and Article 32(3) of the EBA's Regulatory Technical Standards on strong customer authentication and common and secure communication (the RTS on SCA & CSC)³ and that are therefore unlawful. Said Opinion specified that, where obstacles are identified, the EBA expects national competent authorities (NCAs) to take the necessary actions to ensure that ASPSPs comply with the PSD2 and the RTS and remove any obstacle identified within the shortest possible time and without undue delay.
3. The EBA acknowledges that NCAs have taken measures to ensure that ASPSPs in their jurisdictions comply with PSD2 and the RTS and that, as a result, many ASPSPs in the EU have removed these

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

² See

https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2020/884569/EBA%20Opinion%20on%20obstacles%20under%20Art.%2032%283%29%20RTS%20on%20SCA%26CSC.pdf

³ see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0389>

obstacles. The EBA, however, continues to observe that some ASPSPs across the EU have still not removed them and are preventing the competition-enhancing objective of the PSD2 from materialising in full. To that end, and to fulfil its statutory objective of contributing to supervisory convergence in the EU, the EBA is issuing this Opinion, so that the relevant legal requirements are applied consistently across the EU by removing identified obstacles in a timely manner.

4. In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors⁴, the Board of Supervisors has adopted this Opinion, which is addressed to NCAs under the PSD2.

Proposals

5. In order to ensure that obstacles to the provision of account information services (AIS) and/or payment initiation services (PIS) in the ASPSPs' interfaces are removed, the EBA expects NCAs to assess the progress made by their respective industries, or complete their assessment should they have already started it, taking into account the principle of proportionality. Where this assessment identifies, or has identified, that ASPSPs continue to have such obstacles in their interfaces, the EBA expects NCAs to take, by 30 April 2021, supervisory actions requiring these ASPSPs to become compliant with the applicable law and to set a deadline to said ASPSPs for the removal of these obstacles. NCAs may take said supervisory actions following a risk-based approach. The supervisory actions may include but are not limited to issuing an instruction/warning to ASPSP or requiring an amendment to ASPSP's rules, procedures and/or systems.
6. In the event that NCAs subsequently identify that said ASPSPs do not remove the respective obstacles by the deadline set by the NCA, the EBA expects these NCAs to take more effective supervisory measures to ensure compliance with the applicable law, including but not limited to the revocation of the exemptions from the contingency mechanism under Article 33(6) of the RTS on SCA & CSC already granted to ASPSPs and/or the imposition of fines.
7. The EBA will monitor the way in which the supervisory actions referred to in this opinion are taken into account, so as to contribute to a level playing field across the EU and to a consistent application and supervision of relevant requirements of the PSD2 and the RTS on SCA & CSC. Where the EBA identifies inconsistencies in the application of the PSD2 and the RTS, it will take the actions needed to remedy those inconsistencies by making use of the powers conferred on the EBA in its founding regulation.
8. This opinion will be published on the EBA's website.

Done in Paris, 18 February 2021

[signed]

Chairperson for the Board of Supervisors

⁴ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).