



BANKING STAKEHOLDER GROUP

CONSULTATION EBA/CP/2018/09 ON “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)”

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, August 13, 2018

Foreword

The BSG welcomes the opportunity to respond to the EBA's consultation on 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)

Replies to Questions

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.

Yes, we agree with the EBA's assessments on KPIs and the calculation of uptime and downtime and the ASPSP submission of a plan to publish statistics. We also support CAs collating and submitting aggregate data to the EBA and that this is published.

Nevertheless, we are concerned on how ASPSPs would be commercially impacted by the obligation in paragraph 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."). This information is commercially sensitive, outside the scope of PSD2 and its calculation is not harmonized. Therefore, EBA should provide harmonized criteria to calculate the performance of all PSU interfaces so that the publication of these KPIs do not generate confusion and inappropriate comparisons.

We also suggest the following:

- Performance metrics that benchmark the ASPSP ability to resolve issues/errors with the dedicated interface that are raised by TPPs to be included in Guideline 2.1
- Performance metrics on the scope and accuracy of data made available to TPPs over the dedicated interface to be included in Guideline 2.3(b)
- The establishment of a mechanism/channel for TPPs to report to CAs any availability and performance issues experienced while accessing Test or Live dedicated interfaces.

However, it needs to be stated that the ASPSP cannot be made responsible for factors that are outside its control to be the basis for granting an exemption.

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.

Yes, we agree with the EBA’s assessments on stress testing. Nevertheless, the provided stress test examples may lead to room for subjective interpretations. The goal of stress testing should be to provide customers with a consistent performance of all the ASPSPs channels. We therefore would like to suggest stress-testing the dedicated interfaces by comparing them to the currently used bank channels – in a way that stress testing proves that the dedicated interface is also able to handle a peak load of currently used channels.

It may also be helpful to expand Guideline 4.3 to require ASPSPs to provide CAs a summary of the results of stress testing of all access interfaces. The stress testing results could then be utilised by the CA to compare the performance of the dedicated interface at peak loads across all the payment account access channels deployed by the ASPSP (dedicated TPP interface, PSU direct access interface etc.).

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

Yes, we agree with the EBA’s assessments on monitoring.

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.

Yes, we agree with the EBA’s assessments on obstacles. The BSG believes that there are considerable security advantages to consumers from redirection i.e. where a consumer using an AISP/PISP is redirected to the APSP’s website to enter their credentials directly, sharing access to their account for the use of AISP/PISP services without having to share their login credentials with the AISP/PISP.

We are aware that there has been pressure on the EBA from some AISPs, PISPs and industry groups to declare all redirection an obstacle. Some parts of the BSG believe that this would have been wholly counter to the spirit of PSD2, which is about offering consumers choice of services while improving security and standards of authentication. Consumer choice and empowerment are welcome, but this should not be at the expense of security. These parts of the BSG strongly urge the EBA to retain Guideline 5 as it stands.

Other parts of the BSG concur that redirection can be considered an obstacle and suggest that a test could be applied that requires the PSU authentication approach adopted to be secure whilst at the same time enabling a broad spectrum of product propositions to be

developed. These parts of the BSG are concerned that restricting technical solutions to redirection may prevent user friendly – and secure - alternative service implementations from being developed, reduces the opportunities for innovation and may result in a sub-optimal user experience. These parts of the BSG suggest that the perception of imposed Redirection as an obstacle would be consistent with the provisions of paragraph 35 of the Rationale section which refers to ‘unnecessary steps’ as obstacles that would add friction to the user experience.

There is also concern by some BSG members that PSP services in some Member States that already offer access to data on other (non-payment) accounts through screen-scraping and consumers are likely to have to continue to share access to Personal Security Credentials to maintain such access, going forward.

Furthermore, we believe that actions taken by the PSU to limit certain payment functionalities (ie. spending limits) shall not be considered as obstacles.

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.

The RTS article requiring design and testing to be done to the satisfaction of payment service providers should be interpreted to require some involvement of consumer representatives and of TPPs (see RTS 33(6)(b)) in the design and testing of the interface.

Although we note that ASPSPs will not be required to offer, via the dedicated interface, services such as access to other accounts, some members of the BSG note that such access is likely to be positive for consumers and enable further competition.

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.

Yes, we agree with the EBA’s assessment for widely used.

We are however concerned by the alternative that has been introduced of an interface being made public and “available for wide usage”. Whilst wide usage is a criterion that is based on fact and evidence of use, the criterion detailed in Guideline 7 does not purport to require any evidence of usage to be provided or obtained. It is a poor alternative to the former requirement and merits amendment.

Alternatively, it could be required that ASPSPs should demonstrate that a regulator/API standardisation initiative has assessed the availability of a testing environment for an extended period and that it has been tested with demonstrable TPP engagement.

Question 7: 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.

Yes, we agree with the EBAs assessment to use the service level targets and statistical data. However, we believe that this information should be supplemented by information from complaints received from PSPs, TPPs and consumers.

Furthermore, requirements for ASPSPs to provide error resolution performance statistics should include volume-based information and resolution timelines for errors of different severity, under Guideline 8.1(b).

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.

Yes, we agree with the proposed Guideline 9.

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?

The timelines that will need to be met by ASPSPs seeking exemption are very tight, with testing facilities and interface specifications needing to be available by March 2019.

CAs are likely to come under pressure to finalise their own exemption assessment processes and -subsequently- review and grant multiple exemptions ahead of the application of the RTS on September 14th, 2019.

In this context, we encourage the EBA to proceed to review the comments received on the Consultation Paper and publish the final version of these Guidelines at the earliest opportunity. The EBA should also work with CAs to ensure the quality/consistency of the exemption assessment process in the transitional period ending on the 31st December 2019.

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.

The lack of clarity in some of the Guidelines means that ASPSPs are worried they may not get the exemption from providing a 'fallback' or 'contingency mechanism'. The fallback is supposed to act as an incentive on ASPSPs to make sure their APIs are effective and do not cause any barriers to access for the PSPs. But actually, the risks associated with the fallback (reduced security if consumers continue to share security credentials, and the inability to control what data is accessed) fall on the consumer.

Because ASPSPs are worried that they may not get the exemption, some are talking about building the fallback option anyway - this completely undermines the incentive to deliver high performing APIs. Secondly, we are aware that some are suggesting a mechanism that ASPSPs can implement the fallback option in a more streamlined fashion. Again, as soon as there is a speedy and pain-free way to implement the fallback option, the attractiveness of dedicated APIs is diminished.

The fallback/contingency mechanism is weak from a regulatory and consumer point of view. The fallback is supposed to incentivise ASPSPs to build high performing APIs, but as soon as the fallback is built, the incentive is removed. The fallback shifts risk onto the consumer in terms of sharing security credentials and data privacy. The timelines put forward by the EBA exacerbate the problem and give firms motivation to hedge their risk and build the fallback – which ultimately reduce the incentive to develop high performing, customer-focussed APIs.

Finally, given the pace of change we support the EBA's intention to consider a review of these guidelines sooner than the standard 2-3 year review cycle.