



**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 under PSD2)**

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Public Hearing, EBA, London, 25 July 2018

# Agenda



- 1. The EBA: its creation, objectives, and legal instruments (10 mins)**
- 2. The history of the RTS on SCA & CSC (10 mins)**
- 3. Draft Guidelines on the conditions to benefit from exemption under Art. 33(6) (100 mins)**
  - GL 1: Fulfilment of the conditions set out in Article 33(6)**
  - GL 2: Service Level, Availability and Performance**
  - GL 3: Publication of indicators**
  - GL 4: Stress Testing**
  - GL 5: Obstacles**
  - GL 6: Design and testing to the satisfaction of PSPs**
  - GL 7: Wide usage of the interface**
  - GL 8: Resolution of problems**
  - GL 9: Consultation with the EBA**

# The purpose of EBA public hearings

**For many of its Technical Standards and Guidelines the EBA organises ‘public hearings, with a view to allow interested parties to ask clarification questions.**

- **An EBA hearing takes place during the consultation period, usually a month or so before the submission deadline of responses to the Consultation Paper (CP).**
- **The purpose of the hearing is for the EBA to present a summary of the CP, re-produce the questions of the CP, and asks attendees whether they require additional explanations or clarifications from the EBA so as to be able to answer the questions in the CP.**
- **The public hearing does therefore not replace written responses to the CP, as it is primarily through written responses that the EBA is able to give the views of stakeholders the required consideration**



# **1. The EBA: its creation, objectives and legal instruments**

# The creation of the EBA



- The EBA was established by Regulation (EC) No. 1093/2010 of the European Parliament and EU Council;
- came into being on 1 January 2011;
- took over all existing tasks and responsibilities from the Committee of European Banking Supervisors (CEBS);
- took on additional tasks, incl. consumer protection, the monitoring of financial innovation, and payments;
- is an independent authority;
- is accountable to the EU Parliament and EU Council;
- has as its highest governing body the EBA Board of Supervisors, comprising the Heads of the 28 national supervisory authorities.



# Main objectives and tasks of the EBA

## Objective



“To protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses.” (Art.1(5)).

## Tasks through which the EBA is to achieve its objectives



The EBA shall inter alia “contribute to

- improving the functioning of the internal market, including in particular, a sound, effective and consistent level of regulation and supervision;
- “monitor[ing] new and existing financial activities and adopt[ing] guidelines and recommendations with a view to promoting the safety & soundness of markets and convergence of regulatory practice”. (Art. 9)

# Legal instruments available to the EBA

The EBA has different types of legal instruments at its disposal that differ in terms of purpose, legal status, and possible addressees.

- **Technical standards**
- **Guidelines and recommendations**
- **Opinions / Technical Advice**
- **Warnings**
- **Temporary prohibitions**
- **Joint Positions**
- **Breach of Union law investigations**
- **Binding and non-binding mediation**



# Output of the EBA to date



Since its creation in 2011, the EBA has issued more than 250 legal instruments, plus more than 200 reports and other outputs.

	2011	2012	2013	2014	2015	2016	2017	Total
Regulatory Technical Standards	2	6	2	17	19	12	26	84
Implementing Technical Standards			21	10	10	7	10	58
Guidelines		1	39	22	15	15	14	106
Opinions / Technical Advice	1	6	5	14	21	17	15	79
Published reports	6	12	26	23	34	37	28	166
Recommendations	2		4	1	2	1	3	13
Breach of Union Law investigations				1			1	2
Mediations		2	5				2	9
Peer reviews			1	1	1	2	1	6
Warnings			2					2
Stress tests	1			1	1	1		4

Types of Instruments used in the context of PSD2

# Progress update on PSD2 mandates

Mandates	Milestones reached	Milestone 1: EBA has started work	Milestone 2: EBA has published CP with draft GL/TS	Milestone 3: EBA has published Final draft TS or Final GL	Milestone 4: EBA has published GL Compliance table or Commission has published TS in OJ
1	GL on security of internet payments under PSD1	✓	✓	✓	✓
2	RTS on scheme separation under IFR	✓	✓	✓	✓
3	RTS on Passporting Notifications under PSD2	✓	✓	✓	✓
4	GL on Authorisation of payment institutions under PSD2	✓	✓	✓	✓
5	GL on Professional Indemnity Insurance under PSD2	✓	✓	✓	✓
6	GL on Complaints Procedures by CAs under PSD2	✓	✓	✓	✓
7	GL on Incident Reporting under PSD2	✓	✓	✓	✓
8	RTS on Strong Authentication & Secure Comms. under PSD2	✓	✓	✓	✓
9	GL on Operational & Security Measures under PSD2	✓	✓	✓	✓
10	RTS on Central Contact Points under PSD2	✓	✓	✓	✓
11	RTS & ITS on EBA Register under PSD2	✓	✓	✓	✓
12	GL on fraud reporting under PSD2	✓	✓	✓	✓
13	RTS on home-host coordination under PSD2	✓	✓	2018Q3	

# Other PSD2 topics being progressed by EBA

In addition to the delivery of PSD2 mandates, the EBA has been working on a number of other PSD2-related topics.

- The implications of the ‘transitional period’ under Art. 109 & 115 of PSD2;
- The implications for firms and national authorities from delays in the delivery/adoption of PSD2 mandates;
- Application of the existing JC Guidelines on complaints handling to the new AI and PI service providers under PSD2;
- Supporting the industry in the development of APIs, by being an observer in the API Evaluation Group convened by the EU Commission;
- Extension of EBA’s Q&A and Single Rulebook tool to PSD2; and
- Clarifications regarding the status of agents and distributors of electronic money under the EU freedom to provide services;



December 2017:  
EBA Opinion  
on Transition  
from PSD1 to PSD2

February 2018:  
CP on extension  
of JC Guidelines

Observer since  
February 2018

Extension completed  
on 22 June 2018

2018Q4

# Extension of EBA's Q&A tool to PSD2

The EBA has extended its existing Q&A tool to PSD2 as of 22 June 2018, so as to allow external stakeholders to submit questions regarding the EBA's mandates under PSD2.



Access via  
EBA website

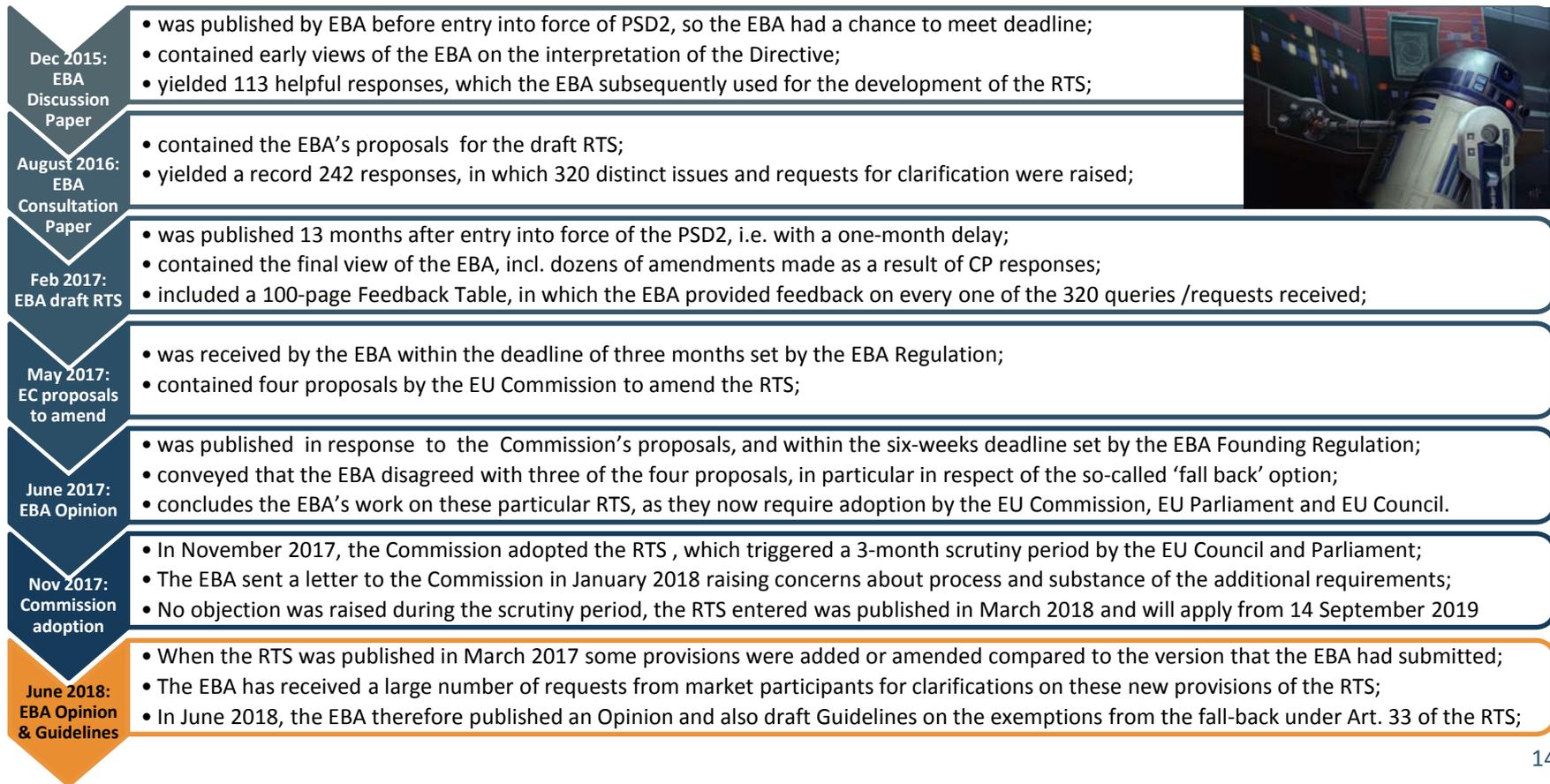
## **2. The history of the RTS on SCA & CSC**

# The different, competing objectives of PSD2

The PSD2 has a number of different, often competing, objectives, that have required the EBA to make difficult trade-offs when developing the RTS on SCA & CSC and related instruments.



# Progress of the RTS on SCA & CSC



### **3. Draft Guidelines on the conditions to be met to benefit from an exemption under Article 33(6) of the RTS on SCA & CSC**

# Background

- **Final version of the RTS contained several amendments that the EBA had not originally submitted to the Commission. In particular, Article 33(6) 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.**
- **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.**
- **EBA 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.**
- **Where referring to AISPs, PISPs and CBPIIs, the Guidelines refer to all authorised or registered PSPs providing these services, including credit institutions.**

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

The GL requires that

- Competent authorities should assess an ASPSP as having fulfilled the four conditions set out in Article 33(6) of the RTS where the ASPSP is compliant with the requirements set out in Guidelines 2 to 8.
- 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 & Performance

The GL requires ASPSPs have in place the same service level objectives and targets, out of hours support, monitoring and contingency plans as are in place for the interface(s) used by the ASPSP's payment service users.

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):

- the uptime of all interfaces;
- the downtime of all interfaces (planned);
- the downtime of all interfaces (unplanned).



## GL 2 on Service Level, Availability & Performance (cont.)



The ASPSP should have in place at a minimum, the following indicators for the performance of the dedicated interface:

- 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) 2015/2366 (PSD2) and by Article 36(1)(b) of the RTS;
- 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;
- 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.

## GL 2 on Service Level, Availability & Performance (cont.)



For the purpose of calculating the values of the indicators set out in Guideline 2.2 for the dedicated interface, the ASPSP should:

- 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;
- 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
- calculate the percentage Uptime as 100% minus the percentage downtime.

**CP 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.**

# Guideline 3 on Publication of Indicators

The GL requires an ASPSP should provide to its competent authority a plan for publication of:

- 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
- from the date of first publication publish the comparison of the availability of its dedicated interface with its best-performing PSU interface.



**CP 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.**

# Guideline 4 on Stress Testing



The GL requires that 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, AISPs and yes/no requests, in terms of the impact on the availability and performance of the dedicated interface.

- The ASPSP should undertake adequate stress testing of the interface including but not limited to:
  - the capability to support access by multiple firms;
  - the capability of the interface to deal with unusually high numbers of requests without fail;
  - the use of an extremely high number of concurrent sessions open at the same time for payment initiation and account information requests; and
  - requests for large volumes of data.
  
- 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.

**CP 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**

# No Guideline on ‘monitoring’ under Article 32(2)

- 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.
- As a result, the EBA is not proposing any Guideline in relation to the monitoring requirement under the RTS.



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

# Guideline 5 : Obstacles



The GL requires an ASPSP to provide to its CA

- A summary of the methods of access chosen by the ASPSP; and
- 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

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

- the dedicated interface does not prevent PISPs and AISPs from relying upon the security credentials issued by the ASPSP;
- 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);

## Guideline 5 : Obstacles



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

- 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
- 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.

**CP 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.**

# Guideline 6: Design and testing to the satisfaction of PSPs

The GL requires that 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:

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

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

- a stable and secure connection;
- the ability to exchange qualified certificates for electronic seals and qualified web authentication certificates referred to in Article 34 of the RTS;
- the ability to send and receive error messages in accordance with Article 36(2) of the RTS;



# Guideline 6 (cont.): Design and testing to the satisfaction of PSPs

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



## Guideline 6 (cont.): Design and testing to the satisfaction of PSPs

- 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.
- Where an ASPSP is implementing a market initiative standard, it should provide the competent authority with information as to:
  - which standard the ASPSP is implementing; and
  - whether, and if so how and why, it has deviated from any standard implementation requirements of the initiative, if available.
- 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.



**CP 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.**

# Guideline 7: Wide usage of the interface

- The GL requires ASPSPs should provide to the CA a summary as to the availability of the technical specification and testing facility to the market and steps for the interface to be operationally used. The information should include, but is not limited to
  - the total number of PISPs, CBPIIs, AISPAs that have or have applied for the relevant authorisation that have made use of the testing facility; and
  - the number of AISPAs, PISPs and CBPIIs using the interface.
- 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. This includes, where appropriate, the website of the ASPSP, social media, industry trade bodies, conferences and direct engagement.
- The 3-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.

**CP 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.**

# Guideline 8 : Resolution of problems

- The GL requires the ASPSP to provide to the competent authority:
- information on the systems or procedures in place for tracking, resolving and closing problems, including those reported by PISPs, AISPs and CBPIIs; and
  - 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.



**CP 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.**

# Guideline 9 : Consultation with the EBA



## ➤ The GL requires CAs

- To submit to EBA the Assessment Form for each request for an exemption that they intend to grant. CAs 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 CA consulted the EBA.
- Competent authorities that have refused to exempt an ASPSP because its dedicated interface does not comply the RTS and the GL should submit to the EBA the assessment form.
- However, in the period until 31 December 2019, CAs can proceed to grant an exemption provided that competent authorities have consulted the EBA by informing it of their intention to grant an exemption.



**CP 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.**

# Other consultation questions



**CP 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?**

**CP 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.**

**Thank you for your time.**

**Do you have any additional questions for the EBA?**



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