

PSD2/Regulatory Technical Standards (RTS) on Strong Customer Authentication and Secure Communication, and IFR/RTS on separation of payment card schemes and processing entities

Committee on Economic and Monetary Affairs
Scrutiny Session of 21 November 2017

This briefing supports **ECON's work on scrutiny** of delegated acts, in particular the discussion of **21 November 2017** on the Regulatory Technical Standards (RTS) on **Strong Customer Authentication and Secure Communication (SCA)** to be adopted by the European Commission under Article 98 of the revised *Payment Services Directive (PSD2)* [2015/2366](#). ECON has already held a [Scrutiny Session](#) on the European Banking Authority (EBA) consultation paper (see [briefing](#) for the 28 November 2016 session)¹ and another one on the final EBA draft (see [briefing](#) for the 27 March 2017 session).

Part of the meeting will cover the **RTS on separation of payment card schemes and processing entities** under [Regulation \(EU\) 2015/751 on interchange fees for card-based payment transactions](#) (IFR), discussed in the Scrutiny Session of 20 June 2017 (see [briefing](#)) that has been adopted (scrutiny until 4.1.2018).

In brief

PSD2 aims at, inter alia, harmonisation, innovation and security with regard to payment services. Concerning security, Article 98 of PSD2 requires *Regulatory Technical Standards on strong customer authentication and secure communication* (RTS SCA) to be drafted by the EBA in cooperation with the ECB and to be adopted by the Commission. On the basis of a [Discussion Paper](#) published in 2015, the EBA issued in mid-2016 a [Consultation Paper](#); the final draft [RTS](#) text was then submitted to the Commission in February 2017. The Commission sent a letter to the EBA on 24 May 2017 (Ares(2017)2639906) accompanied by drafting suggestions ([RTS on SCA redrafted](#)). The Commission pointed out that the **main changes** concern the **fall back option in the communication interface** part of the RTS and an exemption for corporate payments. The EBA has commented - partly critically - on these changes on 29 June 2017 ([EBA/OP/2017-09](#)). The Commission has not yet adopted the RTS, but according to information available at this stage, in particular the fall back option will be maintained but accompanied by an waiver possibility for national competent authorities (NCAs) provided that certain requirements are met and maintained.

The RTS on SCA will have to balance, on the one hand, the possibility (also for new market entrants) to provide the new services regulated by PSD2, to enhance existing payment services and users' experience, as well as to allow for innovation and, on the other hand, to introduce a framework that ensures common,

¹ The ECON PSD2 Negotiating Team commented on the EBA consultation text in its [letter to the EBA](#) (24.10.2016), namely on business model neutrality; conflicting limits to the use of risk-based authentication (RBA); and direct and indirect access possibilities for Payment Service Providers (PSPs). The NT wanted to ensure that direct access to payment accounts remains possible for TPPs when a bank's interface is used, and that banks will ensure that authentication as required by Article 65(2)(c), Article 66(3)(d) and Article 67(2)(c) PSD2 is technically possible for both, indirect and direct access.

as well as specific, approaches which ensure a high level of security, e.g. by proper authentication (confirming that the person giving the payment instruction is the right person). In its opinion of June 2017, the EBA agreed with the aims sought in the Commission's amendments, but voiced its disagreement with most of the amendments that the Commission proposed on the basis that these would negatively impact the fine trade-off and balances previously found in the draft RTS. The Commission proposed that

- the **audit** performed in relation to the exemption based on using transaction risk analysis should be **performed by statutory auditors** (Article 3(2) draft EBA RTS);
- an **exemption** to strong customer authentication for certain **corporate payments** when they use dedicated payment processes or protocols should be added (new Article 17);
- in relation to the use of exemptions to strong customer authentication, payment service providers should **report the outcome of their monitoring and the methodology used to calculate the fraud rate** under the exemption based on using transaction risk analysis **to the EBA**, in addition to reporting this information to the national competent authorities (Articles 18(3) and 20(2));
- in case of the unavailability or inadequate performance of a dedicated interface (API) of a bank (ASPSP), service providers (AISPs and PISPs) should be **allowed to access information using the customer interface** (Article 33); the 'fall-back option'.

ABBREVIATIONS

AIS(P)	account information service (Art. 4 (16) PSD2) provider
API	application programming interface (e.g. offered by a bank where IT developers can latch on and create specific customised app solutions), also called ' dedicated interface '
ASPSP	account servicing payment service provider (Art. 4 (17) PSD2), e.g. a bank
NCA	national competent authority
PIS(P)	payment initiation service (Art. 4 (15) PSD2) provider
PSP	payment service provider (PSD2/SEPA context)
PSU	payment service user (PDS2/SEPA), e.g. the bank account holder
SCA	strong customer based authentication (Art. 98 PSD2)

EXPECTED TIMELINE FOR RTS SCA ADOPTION AND COMING INTO FORCE

At the time of the scrutiny session, the RTS is still awaiting adoption. The expected timeline is:

25 November 2015	PSD2 adopted (published 25 December 2015, in force as of 12 January 2016)
8 December 2015	EBA publishes discussion paper
12 August 2016	EBA publishes consultation paper
23 February 2017	EBA publishes <i>final</i> draft RTS SCA and submits it to the Commission.
24 May 2017	Commission sends letter to the EBA with amended draft RTS
29 June 2017	EBA comments on amendments
24 November 2017?	Commission to adopt the RTS (expected date)
13 January 2018	PSD2 becomes applicable.
xx February 2018?	Scrutiny period of European Parliament and Council: probably 3+ 3 months if not 'the same' as the final draft EBA RTS, Art. 13(1) EBA Regulation 1093/2010
xx August 2019?	the RTS to become directly applicable 18 months after its entry into force, see Article 115(4) PSD2

EXPECTED AMENDMENTS BY THE COMMISSION

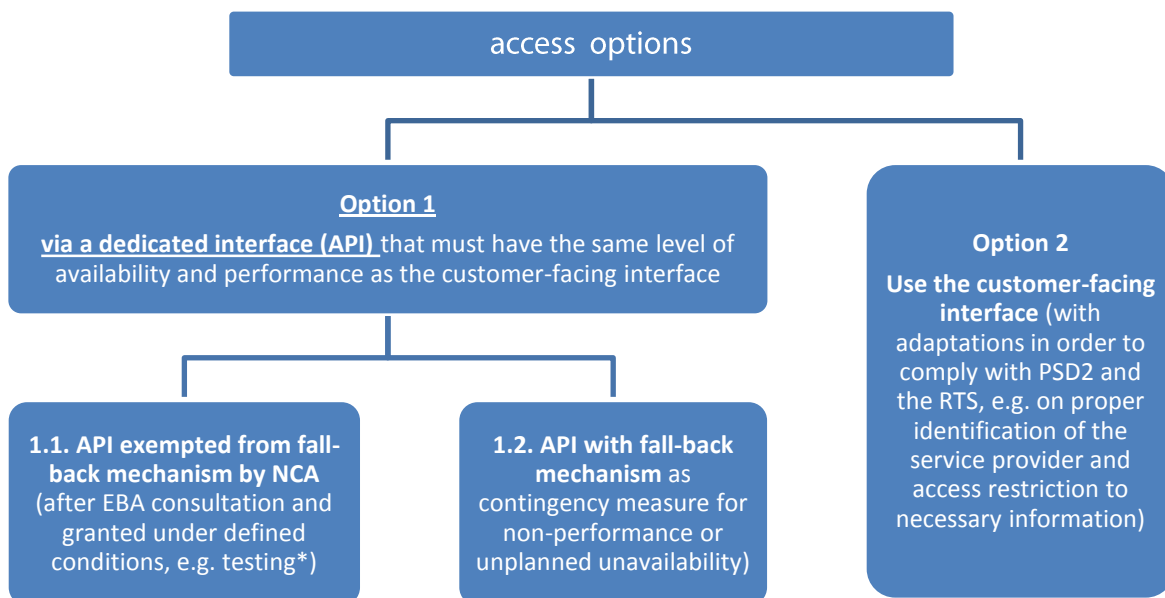
Presently, the text of the final RTS is not known! The two major amendments are likely to be as follows:

- a (separate) exemption of SCA for specific secure corporate payments (PSPs shall be allowed not to apply SCA for payments made through the use of dedicated corporate payment processes or protocols that are only made available to payers who are not consumers where the NCAs are satisfied that they guarantee at least equivalent levels of security to those aimed for by PSD2);
- contingency measures where banks opt for a dedicated interface: ad hoc, mandatory or no fall-back mechanism.

The discussion of stakeholders focusses on the modalities of the fall-back mechanism and the conditions for exemptions from providing the fall-back mechanism.

POSSIBLE ACCESS INTERFACE OPTIONS FOR ASPSPs

Presently, the text of the final RTS is not known! It is expected that under the final RTS, banks (ASPSPs) will have the following two options to provide access to customers' (PSUs') accounts for service providers:



*AISP and PISP will have to comply with the access options chosen by banks. To guarantee business continuity to AISP and PISP and to avoid arbitrage between online banking platforms and dedicated interfaces, where banks have chosen a dedicated interface (API) to communicate with AISP and PISP, such an interface will need to have been **tested three months at prototype stage and an extra three months in market conditions**.

- A dedicated interface will be considered functional if it is as available and performant as the customer-facing interface and does not create obstacles to the provision of payment initiation and account information services. There will be a presumption that this will be the case if market actors -ASPSPs, AISP and PISP- consensually agree on the quality of a given dedicated interface.
- NCAs, after **EBA consultation to ensure pan-European consistency**, will have to **exempt** individually the ASPSPs that have a dedicated interface that has proven functional from the obligation to set up a mandatory fall-back mechanism. To facilitate the assessment process, the Commission is working with the ECB, to **set up a market group**, representing in a balanced composition ASPSPs, PISPs, AISP and payment services users that would vet the different national and pan-European initiatives for the development of standardised dedicated interfaces.
- To guarantee AISP and PISP business continuity over time, in the case where an exempted dedicated interface would break down, the final RTS would foresee that the possibility for AISP and PISP to have **recourse to the customer-facing interface** to obtain the information needed to continue delivering their services to their customers. The recourse to that 'ad hoc' fall-back mechanisms would be subject to a number of strict conditions imposed to AISP and PISP, such as clear identification vis-à-vis ASPSPs, information of the respective NCAs of the use of such an ad hoc mechanism, logging of the data sessions/transactions performed under that mode for ex post control by NCAs.

SOME DISCUSSED ISSUES

- how to determine/define an 'unsatisfactory' service/access level of a dedicated interface;
- how to ensure that service level of exempted dedicated interface is maintained;
- interplay of (e.g. Article 94(2)PSD2 and the [General Data Protection Regulation](#) (EU) 2016/679 (GDPR).

In brief

1. The EBA published its [draft RTS](#) (EBA/RTS/2016/05) on 27 July 2016².

Content: requirements for payment card schemes and processing entities to ensure the application of **independence requirements in terms of accounting, organisation and decision-making processes**.

2. The Commission proposed six amendments to the text with a view to strengthening separation; see [letter](#) of 5 January 2017 (COMP/D1/DF/lb D(2017)000832) to the EBA, supplemented with new [draft RTS](#).

Content: a) restricting entities' ability to establish joint employee share plans and benefits arrangements; b) preventing card schemes and processing entities from sharing staff for the purposes of innovation; c) preventing the practice of 'revolving doors'; and d) reviewing the rules governing the holding of directorships in both entities by the same person at the same time.

3. On 16 February 2017, the EBA issued an [opinion](#) (EBA/Op/2017/01), including a **revised draft RTS**.

Content: The EBA agrees with three of the Commission's proposals (in modified form), but does not agree with the remaining three on the grounds that the rejected proposals appear to assume that card schemes and processing entities are, or should be, treated **as if they were legally and structurally separate, which is not required under the IFR**. The EBA therefore perceives the proposals as disproportionate and ambiguous or difficult to apply when it comes to payment card schemes and processing entities that are not legally separated, or are separate undertakings within the same group.

4. On 4 October 2017, the Commission adopted the RTS ([C\(2017\) 6652](#)) and submitted it to the Parliament and the Council for three months scrutiny period (until 4 January 2018 - may be extended for 3 months).

THE THREE DISCUSSED POINTS - COMMISSION KEPT ITS APPROACH

- derogation from the independence requirement for staff related to the department of innovation, Art. 10(3); **COM kept the deletion of the exemption**;
- permission of general employees' share plans and benefits arrangements, which may be applied to all employees of a functionally separated entity, Art. 11(3), 1 RTS; **COM kept the deletion of the exemption**, and
- conditions applied to multiple directorships held by the same person in a management body, Art. 16 RTS; **COM kept deletion of the reference to a limited number of directorships, the introduction of publication of criteria for multiple directorships, and its further changes to the text**.

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² Article 7(6) IFR gave the EBA until 9 December 2015 to submit the draft RTS.