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## **COMMUNICATION TO THE COMMISSION**

**on the intention to endorse, with amendments, the draft Regulatory Technical Standards submitted by the European Banking Authority for strong customer authentication and common and secure open standards of communication in accordance with Article 98(4) of Directive (EU) 2015/2366**

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#### **A. Introduction**

The present Communication relates to draft Regulatory Technical Standards submitted to the Commission by the European Banking Authority (EBA) for strong customer authentication and common and secure open standards of communication in accordance with Article 98(4) of Directive (EU) 2015/2366 on payment services in the internal market.

The founding Regulation of EBA<sup>1</sup> lays out, in Article 10, the procedure for the endorsement of draft regulatory technical standards developed by it. In particular, Article 10(1) of the EBA Regulation provides that where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards, the EBA is required to submit the draft regulatory technical standards to the Commission for endorsement. Where the Commission intends to endorse those draft regulatory technical standards with amendments, it shall send them back to the EBA explaining why it intends to endorse them with amendments.

#### **B. Background**

The revised Payment Services Directive (EU) 2015/2366 (hereinafter, "PSD2") was published in the Official Journal of the European Union (EU) on 23 December 2015, and entered into force on 13 January 2016. Member States shall adopt and publish the measures necessary to comply with the Directive and apply them from 13 January 2018, except for the application of the security measures referred to in Articles 65, 66, 67 and 97, which will be applicable 18 months after the date of entry into force of the current regulatory technical standards referred to in Article 98.

One of the major objectives of PSD2 is to increase the level of security of electronic payments. To that end, it has introduced a number of security requirements that shall be observed by payment service providers, be they banks or other payment institutions, when processing payments or providing payment-related services.

Another major objective of PSD2 is to bring about more competition and innovation in the retail payment market by including in its scope two new types of payment services, the so-called payment initiation services and the account information services. Payment initiation services allow account holders to pay for their purchases online through a simple and cheap credit transfer, while the merchant receives from the service provider immediately a message

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<sup>1</sup> 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.

that the payment is on its way allowing the merchant to provide the service or to ship the goods immediately. Payment initiation services thus provide an alternative to credit cards when making online purchases. Account information services cover services that allow users to better manage their personal budgets, by providing inter alia consolidated views on their financial position. Both types of services require access to data on the customer's account. PSD2 provides for this access, under strict and pre-defined conditions.

Following the mandate in Article 98(4) of PSD2, EBA has submitted to the Commission on 23 February 2017 the draft regulatory technical standards for strong customer authentication and common and secure open standards of communication. These standards define the requirements for the strong customer authentication as well as the the situations in which payment service providers can be exempted from such authentication. They also cover the requirements for common and secure standards of communication to which the providers of these services as well as banks would have to adhere to.

### **C. Assessment of the draft regulatory technical standards**

The draft regulatory technical standards are technically complex, bearing in mind that they set out the specific requirements on strong customer authentication, to be implemented by all payment service providers, as well as the specific requirements for secure and common standards for the development of a communication interface between the different players.

It is of paramount importance that the final version provides clarity and certainty to all players concerned. The amendments make a number of clarifications and restructure the legal text to better reflect the mandate of PSD2. Furthermore, a limited number of amendments change the substance on the following issues in response to a number of justified concerns.

The substantive changes proposed relate to the following issues:

1. Independent auditing of the security measures in case when transaction-risk analysis exemption is applied (Ref. Chapter 1, Art. 3(2) of the EBA draft)

The proposed change is based on the following reasoning. The transaction risk analysis exemption from strong customer authentication under Article 16 of the EBA draft relies heavily on the sophisticated risk analysis methodology. Therefore an audit of this methodology, of the risk model and of the reported fraud rates should be performed by statutory auditors to ensure objectivity in the application of this exemption between different providers, independent verification of the conditions imposed by the RTS and a good quality of the reported data.

2. New exemption to strong customer authentication for certain corporate payment processes (Ref. Chapter III, NEW Article 17)

The proposed change is based on the following reasoning. We have included a new exemption to the application of strong customer authentication concerning certain corporate payments when they use dedicated payment processes or protocols in the cases where, due to the specificity of such solutions and the level of security achieved

by them, the competent authorities can establish that those processes or protocols achieve the high levels of security of payments aimed by PSD2.

3. Fraud reporting by payment service providers directly to EBA (Ref. Chapter 3, Articles 16(2) and 17(2) of the EBA draft)

The proposed change is based on the following reasoning. In accordance with Article 32 of the draft RTS, the EBA should be able to conduct a review of the fraud rates defined under Article 16 and reported in accordance with Article 17 of the EBA draft. In order to do so effectively, the EBA should not only rely on the high-level aggregated data reported by competent authorities in accordance with Article 96(6) of PSD2, but also have access to the individual fraud data and reports from the payment service providers.

4. Contingency measures in case of unavailability or inadequate performance of the dedicated communication interface (Ref. Chapter 5, Article 28 of the EBA draft)

The proposed change is based on the following reasoning. The RTS shall ensure that an unavailability or inadequate performance of the dedicated interface does not prevent payment initiation services and account information services providers from offering their services to the users, where at the same time the user-facing interfaces operate without any difficulties and allow the bank to offer its own payment services.

In case of unavailability or inadequate performance of the dedicated communication interface, banks should offer secure communication through the user-facing interfaces as a contingency measure. Relevant provisions of PSD2 (Articles 65-67) should apply, including identification and authentication procedures. Payment initiation services and account information services providers should in particular comply with their obligations under Articles 66(3) and 67(2) of PSD2.

The use of the contingency measures should be fully documented and reported to the authorities by the relevant providers, upon request, including justification for the use of these measures. Once the dedicated interface is restored to full service, payment initiation services and account information services providers should be obliged to use it.

Procedurally, under Article 10 of the EBA Regulation, the following options are available to the Commission: to endorse the regulatory technical standards without amendments, not to endorse them, to adopt them in part or with amendments. Endorsing the submitted draft regulatory technical standards without amendments is not recommended for reasons of legal certainty, verifiability, and for reasons of ensuring effective enforcement of specific obligations set out in the standards.

It is therefore proposed that the Commission, acting in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) of the EBA Regulation, and in order to take full account of the principles set out in PSD2 in particular, informs the EBA of its intention to endorse the draft regulatory technical standards with amendments.

The EBA has then a six-week period to re-submit the draft regulatory technical standards in the form of a formal opinion after which the Commission may adopt the amended regulatory technical standards.

The Commission is therefore invited to:

- approve the enclosed letter, in which it communicates to EBA its intention to endorse with amendments the draft regulatory technical standards for strong customer authentication and common and secure open standards of communication. The letter includes an Annex containing the amended draft regulatory technical standards that the Commission intends to adopt; and
- authorise the Director General of Directorate General of Financial Stability, Financial Services and Capital Markets Union to sign and transmit the letter enclosed to EBA on behalf of the Commission.