Comments on the EBA's Final Draft RTS on Strong Customer Authentication and common and secure communication under Article 98 of Directive 2015/2366 (PSD2)

The European Fintech Alliance (EFA) is a growing platform for companies active in the FinTech business. EFA aims at representing the strategic interests of the FinTech industry in Europe to overcome the fragmentation of strategic input by various market players. We actively pursue a supporting role for EU authorities when developing market-, consumer- and innovation-friendly EU regulation for FinTech business models.

With reference to the final draft RTS on Strong Customer Authentication and Common and Secure Communication (RTS), published on February 23rd 2017 by the European Banking Authority (EBA), we herewith would like to provide you with **EFA members' key concerns, in case the RTS were to be adopted in their current version by the EU Commission.**

To keep it short and simple in the following, we would like to point out in general that

- all changes proposed by EFA take into account the necessary trade-offs between the various and competing objectives of the PSD2 - acting as a FinTech platform, for us, this also includes to consider in-depth any legitimate banking incumbents' concerns;
- only if FinTech companies and banking incumbents benefit in equal measure from the idea of open banking behind PSD2, and only if all market participants are enabled to act in a legally watertight way, will an innovative and growing market be achieved.

We wish to avoid any unnecessary polarization and therefore strongly support any PSD2 level 2 measure that explicitly aims at promoting the growing field of cooperation between FinTech companies and banks.

Necessary RTS modifications to promote a secure and still growing open banking market in Europe

A. The "screen scraping" ban vs. the use of scraping techniques as part of direct access

Final draft RTS	Modification proposed by EFA	Reasoning
Rational No. 32: "*After consulting with the Commission on the most plausible interpretation of the Directive, the EBA is of the view that accessing accounts through screen scraping will no longer be allowed, once the transitional period comes to an end [...]*"	"*Once the transitional period comes to an end, TPPs are allowed to make use of* ***screen scraping techniques to access payment accounts*** *only as far as PSD2 provisions can still be met, esp. the TPPs' identification according to the ASPSP's certificate check process, secure communication by ASPSP and TPPs and restrictions on TPPs' data access.*"	Technology neutrality: The XS2A-obliged ASPSPs might offer their end user-front end to TPPs in a PSD2-compliant way given the "direct access" option. In this case, however, we are technically talking about offering a **screen scraping technique option** with certain on-top technical security measures (this contradicts the current EBA's wording with regard to the "screen scraping ban"). The proposed modification leaves room for an actual "direct access" option, clearly demarcated from the "dedicated interface".

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B. The "screen scraping" ban vs. innovation as part of other EU objectives

Final draft RTS	Modification proposed by EFA	Reasoning
Rational No. 32: "*After consulting with the Commission on the most plausible interpretation of the Directive, the EBA is of the view that accessing accounts through screen scraping will no longer be allowed, once the transitional period comes to an end [...]*"	Not to mention at all any rationale or comment with regard to a general ban of screen scraping for the access of "accounts".	• Technology neutrality: Screen Scraping **techniques** can still be part of PSD2-compliant XS2A-technologies (see A.). • Redundancy: When accessing payment accounts in a non-PSD2-compliant way, TPPs are to explain themselves towards their national competent authority. • Innovation barrier: The current wording by the EBA puts the obvious legal grey zone for services beyond the PSD2-scope at a higher risk. National authorities might use the EBA's approach for continued/initial screen scraping bans beyond PSD2. TPPs also prefer the usage of smart, dedicated interfaces, i.e. APIs. However, given the current wording TPPs (incl. banks acting as TPPs!) are - again - highly dependent on ASPSPs' mindsets, speed and open banking strategies. This could harm all open banking use cases in need of non-payment account access (i.e. savings accounts, loan accounts brokerage, etc), to start with "simple" multibanking-apps. A lot of other use cases in that regard are already highly established within the European Market. • Consumer and market-friendliness: from a consumer perspective (given data sovereignty and the future right to data portability under the GDPR) as well as from a competition law perspective plus considering other EU objectives (see e.g. EC's Green Paper on Retail Financial Services or the ECON's DRAFT REPORT on FinTech: the influence of technology on the future of the financial sector) there is no reasonable ground for a legal discrimination against non-payment accounts. The market has to develop itself on the basis of "premium dedicated access"-agreements. Bilateral cooperation between FinTech companies and banks for beyond PSD2-services should be promoted, not endangered by the EBA's final RTS.

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C. Optional Strong Customer Authentication exemptions vs. AISP business models

Final draft RTS	Modification proposed by EFA	Reasoning
Article 10 Payment account information: Para. 1 "*[...] payment service providers are exempted from the application of strong customer authentication [...]*" Para. 2 "*[...] payment service providers are not exempted from the application of strong customer authentication [...]*"	To consider Art. 10's Payment Account Information exemptions of applying SCA as mandatory exemptions, i.e. that ASPSPs are obliged to apply these exemptions.	• Change of mind among market players: After the first RTS draft, the EBA received a barrage of strategic input from all industry sectors that jointly requested the extension of SCA exemptions. On the one hand, the revised RTS now stipulate the desired risk-based approach for 2FA-exemptions. On the other hand, the new RTS rules as part of Chapter 1 and 2 turned out to be that extensive and complex that, as a result, market players are now discussing whether to simply forego the implementation of any exemptions and to focus on user experience-friendly 2FA-approaches instead. Some European banks even apply SCA without any exemptions today, i.e. before PSD2. It is therefore not unlikely, that banks will choose a non-exemptions approach since making use of the exemptions will be too burdensome. • Innovation barrier: Given this new situation, TPPs (incl. banks acting as TPPs!) are highly dependent on the ASPSPs' SCA strategies, since they are obliged to rely on the authentication procedures of ASPSPs,. If innovation-averse ASPSPs do not apply the "90 days AIS-exemption" and do not develop user friendly 2FA-procedures, TPPs' use cases might be seriously harmed or even killed. • Different levels of risk: It is obvious that ASPSPs, covering the highest liability risk, should choose to what extent they apply SCA exemptions for transactions. However, with regard to AIS services, the liability risks are lower and that is why a mandatory exemption to protect AISPs' business models might be justified in that case.

If you need any further clarifications, please feel free to contact:

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