EBA-Op-2019-11

16 October 2019

Opinion of the European Banking Authority on the deadline for the migration to SCA for e-commerce card-based payment transactions

Introduction and legal basis

1. The competence of the European Banking Authority (EBA) to deliver this opinion is based on Article 29(1)(a) of Regulation (EU) No 1093/2010[1] as part of the EBA's objective to 'play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union'.

2. In June 2019, the EBA published an Opinion on the elements of strong customer authentication (SCA) under PSD2 (EBA-Op-2019-06)[2], which provided clarity on the different elements of SCA (inherence, knowledge and possession) that would constitute compliant factors for SCA. The Opinion also acknowledged the complexity of the payments markets across the EU and the challenges arising from the changes that are required, in particular by actors that are not payment service providers (PSPs), such as e-merchants, which may lead to some actors in the payments chain not being ready by 14 September 2019.

3. In that regard, the Opinion took the exceptional step of acknowledging that national competent authorities (NCAs) may provide limited additional time for e-commerce card-based payment transactions to allow card-issuing PSPs to migrate to authentication approaches that are compliant with SCA and acquiring PSPs to migrate their merchants to solutions that support SCA.

[1] 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 (OJ L 331, 15.12.2010, p. 12).

[2] See https://eba.europa.eu/documents/10180/2622242/EBA+Opinion+on+SCA+elements+under+PSD2+.pdf

This supervisory flexibility was made available under the condition that PSPs set up migration plans, agree their plan with their NCA, and execute the plan in an expedited manner.

4. The EBA also communicated that the deadlines by which the aforementioned actors will have to have completed their migration plans will be communicated later in 2019, in order to fulfil its statutory objective of contributing to supervisory convergence in the EU/European Economic Area (EEA) and to contribute to a single payments market, and to do so in the context of Directive (EU) 2015/2366 on payment services in the internal market (PSD2) and the regulatory technical standards (RTS) on SCA and common and secure communication.

5. To that end, the EBA is issuing the Opinion on hand to communicate the deadline by which the period of supervisory flexibility should end and the actions that NCAs should require PSPs to perform before that date.

6. The opinion is addressed to NCAs but, given the supervisory expectations it is conveying, it should also prove useful for PSPs, card schemes and payment service users (PSUs), including merchants. In accordance with Article 14(5) of the Rules of Procedure of the Board of Supervisors[3] the Board of Supervisors has adopted this opinion.

General comments

7. Since the publication of the EBA Opinion on the elements of SCA in June 2019, the EBA took note that all NCAs in the EU made use of the flexibility granted and communicated this to their respective industries. Furthermore, and in order to be able to make a well-informed decision as to the most appropriate deadline and the actions that the industry should take until then, the EBA and NCAs carried out a fact-finding exercise in July and August 2019.

8. They did so by approaching a wide range of stakeholders in the payments sector across the EU through a survey. The survey was aimed at better understanding the state of readiness of the industry, and was sent to issuing PSPs, acquiring PSPs, and EU and national merchant and consumer associations. The EBA received input from more than 90 respondents from 30 jurisdictions, which the EBA assessed during September 2019.

9. The large majority of stakeholders indicated that they prefer a consistent and harmonised implementation of SCA with regard to e-commerce card-based payment transactions, with a single common deadline. In their view, this would avoid otherwise negative impacts on cross-border payments, the decline of legitimate payment transactions, customer drop-out, level-playing field issues across jurisdictions, regulatory arbitrage and further complexity. The EBA agrees with these views and the underlying arguments and therefore recommends to NCAs to take a consistent approach toward the SCA migration period by abiding by the deadline specified in the next section and requiring their respective PSPs to carry out the actions set out in this Opinion.

10. In addition, the EBA recommends that, where required, NCAs communicate to their PSPs that the supervisory flexibility granted by the EBA is not equivalent to a delay in the application date of

[3] Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 27 November 2014 (EBA/DC/2011/01 Rev4).

the SCA requirements in PSD2 and the RTS but rather means that NCAs would not take enforcement/sanction actions against PSPs if they respect the milestones and the expected actions specified in the next section of this Opinion. Rather, the requirements apply as of 14 September 2019, as imposed in the Directive, and this means that any PSP not complying with them is in breach of law.

11. Furthermore, NCAs should also communicate to their PSPs that the liability regime under Article 74 of PSD2 also applies, without any delay, that issuing and acquiring PSPs are therefore liable for unauthorised payment transactions and that PSPs should therefore have a self-interest to migrate to SCA-compliant solutions and approaches in an expedited way.

Specific comments

12. These specific comments refer to the deadline for the migration to SCA and the actions issuing and acquiring PSPs need to take during that period.

Deadline for the migration to SCA

13. The EBA has arrived at the view that migration plans of PSPs, including the implementation and testing by merchants, should be completed by **31 December 2020**.

14. The EBA acknowledges there are many different views on the appropriate timelines for migration of each type of industry stakeholder. The feedback to the questionnaires indicated that most issuing and acquiring PSPs in half of the Members States were likely to be ready with SCA-compliant solutions and approaches by the end of 2019, with PSPs in a number of other Member States being ready in the first half of 2020. With regard to merchants, in turn, the majority of respondents were concerned about the readiness of small and medium sized merchants and indicated that, with the exception of a few sectors such as travel and hospitality, these merchants will need between 3 and 9 months to implement solutions supporting SCA in their systems.

15. In this context the majority of the respondents to the questionnaires indicated that they would prefer 18-months period for smooth, frictionless and ordered migration of the entire e-commerce card-based payment ecosystem to SCA-compliant approaches and solutions. They argued that this timeline takes into account:

    - the complex relationships and dependencies between various stakeholders, such as issuing and acquiring PSPs, payment gateways, merchants, consumers, card schemes and others; and
    - the dependency with the roll-out and implementation of the 3DS V2.2. communication protocol that is made available by the major card schemes, which should enable the application of the full range of SCA exemptions specified in the RTS and the out-of-scope of SCA transactions, such as payee initiated transactions.

16. The EBA assessed the feedback above and noted that the 18-month suggestion put forward by many respondents appeared to be driven significantly by the timeline of the development of a particular version of a particular communication protocol that has been under development by some of the major card schemes (3DS 2.2.). That version is aimed at enabling the application of

the full range of SCA exemptions specified in the RTS and the transactions that are out-of-scope of SCA altogether.

17. However, other means of payment are available and taking into account the objectives of PSD2 and the RTS of technical neutrality and increasing competition in the payments market, the EBA's view cannot be based solely on providing a benefit to one or more incumbent providers, while market challengers that provide competing payment services are already ready to offer SCA-compliant solutions.

18. In addition, any potential delays in the roll-out and/or implementation of said protocol at a later stage would require further extensions of the deadline, which would be a dependency that would be controlled, not by the EBA and the NCAs, but the industry that is subject to the requirements.

19. Relatedly, the EBA's assessment of the responses also suggested that a preference for 18 months is also driven by the desire of the industry to develop a version of the protocol that is not only SCA compliant but additionally allows the application of the full range of exemptions to SCA that the RTS allows.

20. However, the majority of these exemptions were introduced by the EBA during the consultation phase to the RTS in 2016 to address requests from the industry that exemptions to SCA should apply for particular payment transactions, such as low-value transactions, transactions initiated to trusted beneficiaries, recurring transactions or transactions posing a low level of risk based on transaction monitoring mechanisms. They have therefore been known since February 2017, when the EBA published the final draft RTS. The EBA is therefore of the view that the industry had sufficient time to implement the necessary changes to the protocol and IT systems more generally.

21. More importantly, the exemptions are exceptions from the general and default rule. Therefore the delay of the application of the full-range of exemptions, albeit the requirements of Article 98(2)(e) of PSD2 aiming at the development of user-friendly means of payment, cannot justify a significant delay in the application of the security requirements. The industry may therefore wish to consider prioritising the development of the actual SCA requirements and incorporating the exemptions at a later date.

22. Nevertheless, the EBA acknowledges that:

    - those Member States where issuing and acquiring PSPs have reported that they will need more time constitute a significant proportion of e-commerce card-based payment transactions in the EU; and
    - in line with the objectives of PSD2, it is important for payment service users to have user-friendly and accessible means of payment for low-risk payment transactions, such as the SCA exemptions.

23. In that regard, and as stated above, the EBA is of the view that the supervisory flexibility should end on **31 December 2020**, which should be sufficient for issuing PSPs, acquiring PSPs and their merchants to migrate to SCA-compliant approaches and solutions.

Actions to be taken by NCAs during the SCA migration period

24. In order to ensure expedited migration to SCA, the EBA expects NCAs to take the actions specified in the below two tables towards issuing and acquiring PSPs. In line with paragraphs 14 of the EBA Opinion on the elements of SCA, these actions should also allow NCAs to ensure that PSPs follow their migration plans and to keep track of the progress made. The actions aim at ensuring harmonised and consistent migration to SCA compliance and readiness. However, these actions do not restrict NCAs from requiring more detailed information.

Table 1. Milestones and expected actions from NCAs towards issuing PSPs

Expected actions	Timeline
1. NCAs should require issuing PSPs to identify the authentication approaches that they are currently making available to their customers and separate them into two categories: those that fulfill the requirements of SCA under PSD2 and the RTS and are in line with clarifications provided by the EBA and those that are not.	31.12.2019
2. NCAs should obtain information from issuing PSPs on the authentication approaches (which should include new authentication approaches and those specified under row 1) and the SCA exemptions they intend offering to ensure compliance. NCAs should also request from issuing PSPs plans for the expedited migration, including PSUs' enrolment into these authentication approaches. These plans should contain clear migration targets of the progress made for adoption of SCA-compliant authentication approaches and the SCA exemptions (e.g. on the stages of implementation, testing and rollout). The migration plans should be based on a risk-based approach taking into account the types of transactions and the fraud rates.	31.12.2019
3. NCAs should take stock of the overall readiness of issuers to meet the SCA requirements in terms of the: a) number of payment transactions[4] where SCA was requested divided by the total number of initiated transactions; b) number of payment transactions where an SCA exemption was applied divided by the total number of initiated payment transactions; c) number of out-of-scope of SCA payment transactions (such as payee initiated transactions) divided by the total number of initiated payment transactions; and d) number of PSUs enrolled to initiate SCA-compliant payment transactions divided by the total number of PSUs. The above data should cover the period between 14 September 2019 and 13 March 2020.	31.03.2020
4. NCAs should require issuing PSPs to report on the progress made from 14 March to 13 June 2020 and from 14 June 2020 to 13 September 2020 by providing updated information under item 3 above. This reporting should be such that it provides a reliable picture of the change in the types of transactions and the fraud rates, the progress of adoption of 3DS2.X protocol where it is envisaged, and other metrics	30.06.2020 and 30.09.2020 respectively

[4] Payment transactions, including domestic and cross-border transactions within the EEA regardless of the currency.

depending on the authentication approaches, for instance percentage of customer telephone numbers obtained to the total number of customers for SMS-OTP based approaches.	
5. NCAs should require issuing PSPs to inform PSUs about the SCA-compliant authentication approaches, the SCA exemptions and out–of–scope of SCA transactions they intend offering, and to establish educational campaigns as needed.	Continuous
6. NCAs should require issuing PSPs to make available to their NCAs information about the communications with PSUs under item 5 above.	Every 3 months, starting 14.12.2019
7. NCAs should require issuing PSPs to have completed their migration plans.	31.12.2020
8. EBA to develop a report on the status of SCA-compliance by the issuing PSPs based on consolidated information provided by NCAs.	Q1 2021

Table 2. Milestones and expected actions by NCAs towards acquiring PSPs

Expected actions	Timeline
1. NCAs should require acquiring PSPs to identify the technologies through which they allow issuing PSPs to request PSU authentication that they are currently making available to merchants and separate them into two categories: those technologies that support SCA-compliant authentication and the SCA exemptions and those that do not.	31.12.2019
2. NCAs should obtain information on the plans of acquiring PSPs for the expedited migration, including migration by e-merchants to technologies that support SCA, the SCA exemptions and/or the out-of-scope of SCA transactions. These plans should contain clear migration targets of the progress made towards: a) adoption of technologies that support SCA, the SCA exemptions and the out–of–scope of SCA transactions, if applicable; and b) the implementation of these technologies by merchants. The migration plans should be based on a risk-based approach taking into account the types of transactions, types of merchants, and the fraud rates.	31.12.2019
2. NCAs should take stock of the overall readiness of acquiring PSPs to meet the SCA requirements, and should do so by requesting the following figures: a) number of payment transactions where SCA was applied divided by the total number of acquired transactions; b) number of payment transactions where an SCA exemption was applied divided by the total number of acquired payment transactions; c) number of out-of-scope of SCA payment transactions applied (such as payee initiated transactions) divided by the total number of acquired payment transactions; d) number of e-merchants that support SCA divided by the total number of e-merchants to whom acquiring PSPs provide services; and e) number of e-merchants that support the SCA exemptions divided by the total number of e-merchants to whom acquiring PSPs provide services; and f) number of e-merchants that support the out-of-scope of SCA transactions divided by the total number of e-merchants to whom acquiring PSPs provide services. The above data should cover the period between 14 September 2019 and 13 March 2020.	31.03.2020

4. NCAs should require acquiring PSPs to report on the progress made from 14 March to 13 June 2020 and from 14 June 2020 to 13 September 2020 by providing updated information under item 3 above. This reporting should also reflect the change in the types of transactions and the fraud rates, the progress made by the different types of merchants and the progress of adoption of 3DS2.X protocol where it is envisaged.	30.06.2020 and 30.09.2020 respectively
5. NCAs should require acquiring PSPs to inform the e-merchants they work with about the necessary changes that need to be introduced to the existing technologies used to support SCA, the SCA exemptions and the out–of–scope of SCA transactions.	Continuous
6. NCAs should require acquiring PSPs to provide information about the communications to e-merchants under item 5 above.	Every 3 months, starting 14.12.2019
7. NCAs should require acquiring PSPs to have completed their migration plans.	31.12.2020
8. EBA to develop a report on the status of SCA-compliance by acquiring PSPs based on consolidated information provided by NCAs	Q1 2021

25. This opinion will be published on the EBA's website.

Done in Paris, 16 October 2019

[signed]

Chairperson for the Board of Supervisors