

PAYMENTS & CARDS MAGAZINE



VOLUME 5 ISSUE 8

The 2nd European Banking Authority Opinion on what constitutes Strong Consumer Authentication (SCA) under PSD2: Which timeline for a uniform EU enforcement strategy?

Monica Monaco, Founder of Trust EU Affairs shares her insights on the timing of the enforcement strategy for Strong Consumer Authentication (SCA) under PSD2.

On the 21 June 2019 the European Banking Authority (EBA) published its 2nd Opinion on what constitutes Strong Customer Authentication (SCA). Since then, there are discussions in Brussels about whether it is possible or not, despite the silence of the text in question on this matter, to have a uniform EU common enforcement strategy on SCA. As the reader of this article may already know, the 2nd EBA Opinion only explains that the EBA accepts on an exceptional basis and in order to avoid unintended negative consequences for some payment service users after **14 September 2019**, that national Competent Authorities (CAs) may decide to work with Payment Services Providers (PSPs) and relevant stakeholders, including consumers and merchants, to provide limited additional time to allow issuers to migrate to authentication approaches that are compliant with SCA. This supervisory flexibility is available under the condition that PSPs have set up a migration plan, have agreed the plan with their CA, and execute the plan in an expedited manner. According to the EBA, CAs should monitor the execution of these plans to ensure swift compliance with the PSD2 and the EBA's technical standards and to achieve consistency of authentication approaches across the EU.

In the press release accompanying the 2nd Opinion, the EBA also explains that in order to fulfil the objectives of PSD2 and the EBA of achieving consistency across the EU, the EBA will later this year **communicate deadlines by which the aforementioned actors will have to have completed their migration plans.**

Some Member States have already taken a position on the matter, as **France**, where on the 9th July 2019 the French Central Bank's Secure Means of Payments Observatory published its annual report. In it, under Chapter 1, they discuss the plans to implement SCAs and phase out SMS codes as a means of authentication. On Page 9 the Report states that, in compliance with the EBA's June Opinion, they aim for most market players to have SCAs in place by December 2020, so an extra 15 months from September 2019 deadline. The minority of more complex transactions have 3 years, so they will need to comply by the end of 2022.

In the same fashion the **UK FCA** announced on the 28th of June that the FCA recognises the challenges in meeting the 14th of September deadline and has been working with the industry to develop a plan to migrate the industry to implement SCA for card payments in e-commerce as soon as possible after this deadline. **Bank of Italy** also announced on the 1st of August that a gradual transition can greatly reduce the risks of inefficiencies in online payments by card, avoiding solutions of business continuity in vital economic sectors such as electronic commerce. Therefore, it has decided to grant (upon request of the PSPs) an extension for a limited period, on the basis of a maximum term that will be defined by the EBA **and subsequently disclosed to the market.** PSPs wishing to make use of this extension will have to submit a detailed transition plan.

No other Member State has made public statements in official documents this far, however other Member States have raised similar concerns with timeline proposals for SCA compliance varying between 9 and 18 months. It is our understanding as we write this article that most of the Member States are still forming their views on the length of the enforcement period of SCA, and that their views diverge substantially among one another.

Moreover, the EBA has sent two weeks ago a Questionnaire to national CAs, for them to send the Questionnaire to the key stakeholders in each market. The idea is that key stakeholders in each Member State shall tell the EBA: 1. What type of timeline they have in mind for compliance with SCA; 2. Why do they think such timeline is appropriate; 3. Which are the technical issues they are experiencing. The questionnaire is to be filled in by the **18th of August**, for the EBA to start looking at options for a common enforcement strategy in September, in consideration of the replies received to the questionnaire. An EBA meeting will take place later this month to discuss the issue with the CAs. The EBA shall then issue in the **autumn or before the end of 2019** a communication proposing a timeline for SCA enforcement.

We would like to note in this respect that:

- It is not certain the EBA can in its future Communication present a uniform timeline for SCA enforcement, as Member States seem to have for the time being diverging views on the timeline for SCA enforcement;
- Even if the EBA Communication was to propose a uniform timeline for SCA enforcement, the nature of this Communication may not be mandatory, as only RTS are: member states would in theory still be able to follow or not the EBA guidelines presented in this Communication;
- During the transitional period, payments made without strong authentication may continue to be sent and accepted in the existing way, bearing in mind though the immediate enforceability of the rules for attributing liability in the event of fraud to transactions that do not meet the security requirements of the PSD2 and of the RTS on SCA.

About the author



Based in Brussels since 2003, Monica Monaco is the Founder of Trust EU Affairs. She is a member of the Society of European Affairs Professionals since 2004, a member of the Europol Virtual Currencies Taskforce, and of the European Commission Payment Systems Market Expert Group. Monica can be contacted at monacom@trusteuaffairs.com.

About Trust EU Affairs



Trust EU Affairs is a regulatory affairs consultancy specializing in financial services legislation at the European Union level. Founded in Brussels in 2013, it draws upon over 17 years of EU regulatory and public affairs experience.
