

Open everything and improved security: life after PSD2

PSD2 is a significant piece of legislation, aimed at disrupting the traditional banking and payment services market, improving competition and promoting innovation. One of the ways it does this is by forcing providers to allow access to customer accounts to disruptors who can offer new services to customers by exploiting the wealth of information which can be obtained through access to customers' account information. Nearly two years after PSD2 first came into force, how is this brave new era of open banking working out for both sides? What might the next twelve months bring? We provide a snapshot of the current state of play and some crystal ball gazing from our European and UK teams below.

It's not just about disruption though. PSD2 also looks to protect consumers by imposing a higher level of security for online activity and card payments. This now requires "strong customer authentication" or "SCA" – involving 2 out of 3 elements of possession, knowledge or inherence – for example, confirming a card payment by typing in a one-time password sent to a mobile phone. Whilst the implementation date for these new requirements was set for 14 September 2019, it became apparent as the deadline approached that there was still a lot of work to do to ensure that the technical changes required were in place. There

were potential issues at all stages of payment transactions, impacting retailers, card issuers, merchant acquirers and the major card schemes.

A concerted lobbying effort to delay full implementation for online transactions resulted in an EBA opinion, published in June 2019, setting out a structure for national regulators to allow a degree of tolerance (or "supervisory flexibility") for delayed implementation of SCA in their jurisdictions. The national approaches to this "supervisory flexibility" across the EU have not been uniform; we set out the position in some of the major jurisdictions below.

Jurisdiction	What's the current market approach to open banking? How might it develop in the year ahead?	SCA delay: what's the plan? *
France	<p>STET S.A., a French company owned by major French credit institutions (BNP Paribas, BPCE, Crédit Agricole, Banque Fédérative du Crédit Mutuel, La Banque Postale and Société Générale), has built and launched a PSD2 API aiming to provide a secure and easy-to-use set of services to be implemented by European account servicing payment service providers (ASPSPs) for access by third party providers (TPPs).</p> <p>French ASPSPs are generally expecting to rely on the STET API, although certain ASPSPs may have decided to rely on in-house API or web scraping solutions.</p>	<p>The French Central Bank considers that French payment service providers will not be able to comply in time because most are already relying on (and are planning to continue to rely on) the EMV 3-D Secure communication protocol that the EBA's June 2019 opinion classed as non-compliant with SCA. The Central Bank has therefore proposed to ensure compliance with SCA on a gradual basis over a period of three years. It expects to have 60% of payments requiring SCA compliant with the RTS in December 2020 and 90% in December 2021. It will carry out an assessment of the situation in the French market by the end of each year until 2022.</p> <p>The French banking supervisory authority (<i>Autorité de contrôle prudentiel et de résolution</i>) (ACPR) has not yet published any official position in response to the publication of the EBA opinion on SCA in June 2019.</p>

Jurisdiction	What's the current market approach to open banking? How might it develop in the year ahead?	SCA delay: what's the plan? *
Germany	<p>Open banking has been the subject of much discussion between the traditional banks and fintechs. The banks are offering one API standard, which many fintechs see as too sophisticated and complex to use. BaFin, the German regulator, has intervened and required banks to continue to offer customer interface access for third party providers (TPPs) as an interim measure until the APIs have been improved.</p>	<p>BaFin, the German regulator, has issued a circular which broadly reflects the position adopted by the EBA opinion. BaFin is looking to grant greater flexibility to market participants when implementing SCA in relation to online card payments.</p> <p>BaFin has also published a statement saying that it will not enforce the 14 September 2019 SCA deadline. This only concerns e-commerce card transactions and issuers and acquirers are expected to comply. However, they can accept non-SCA transactions for the time being to ensure that there is no disruption to card acceptance. BaFin has not yet set a new deadline as it will determine the timeline after consulting with market participants. It has, however, pointed out that (i) strict liability in accordance with PSD2 applies and (ii) best efforts to implement the changes are expected from market participants.</p>
Italy	<p>In June 2018, the first open banking platform was launched in Italy. It is a financial ecosystem enabling and promoting collaboration between banks, corporate and fintech companies in order to create innovative solutions for customers. Also, it aggregates, integrates and coordinates APIs and services developed by participants in the ecosystem.</p> <p>Since September 2018, a significant number of banks have relied on an external service provider, CBI Globe - Global Open Banking Ecosystem.</p> <p>No further guidelines have been provided on open banking in Italy.</p>	<p>On 1 August 2019, the Bank of Italy published a communication providing for the possibility to request additional time for the implementation of SCA requirements for online card payment transactions. The communication indicates that the maximum term of the extension will be established by the EBA and subsequently communicated to the market. In order to take advantage of the extension, relevant entities will need to submit a detailed migration plan to the Bank of Italy which must also include initiatives in terms of customer preparedness and communications toward both merchants and cardholders. During this migration period, payments executed without SCA will be subject to the liability regime under the national implementing legislation for PSD2.</p>
Luxembourg	<p>Luxembourg has a global and standardized platform named LUXHUB which is used by many large, both public and private, Luxembourg banks. LUXHUB's website provides a "catalog" of API providers which include, but are not limited to, the Banque de Luxembourg, Banque Raiffeisen, BGL BNP Paribas, Spuerkeess and Post Luxembourg. As from 14 June 2019, LUXHUB is available to third party providers (TPPs).</p> <p>It is also interesting to note that another large Luxembourg bank, the Banque Internationale à Luxembourg (BIL), has developed its own open banking platform (apparently open to developers) via a first API, giving access to account information (balance and transactions) and enabling payments. It is not yet clear if any TPPs are already using the API. It will be interesting to see how this develops in the following months and to have feedback on the existing platforms.</p>	<p>The Luxembourg supervisory authority (<i>Commission de Surveillance du Secteur Financier</i>) (CSSF) published a press release on 30 August 2019 extending the deadline for SCA compliance beyond 14 September 2019 for e-commerce card payment transactions. The CSSF states that it is aware of the complexity of the required compliance changes and has made use of the possibility offered by the June 2019 EBA opinion to extend the SCA implementation period. The CSSF has also affirmed its willingness to participate in cross-border discussions in order to adopt a common and harmonized deadline. Finally, entities that want to make use of this extension must inform the CSSF and submit a detailed migration plan.</p>

Jurisdiction	What's the current market approach to open banking? How might it develop in the year ahead?	SCA delay: what's the plan? *
The Netherlands	<p>A significant number of Dutch banks have made API services available in recent months. As yet, no further guidance on open banking has been published in the Netherlands.</p>	<p>Although the vast majority of payments in the Netherlands meet the new SCA requirements, some credit card payments are not yet compliant.</p> <p>The Dutch Central Bank (<i>De Nederlandsche Bank</i>) (<i>DNB</i>) intends to grant limited additional time to market participants who were unable to prepare for the introduction of SCA for credit card transactions on time. The amount of additional time that will be granted has not yet been determined. Working with the EBA, the DNB aims to achieve a uniform migration within Europe towards the introduction of SCA for credit card transactions.</p>
Poland	<p>The Polish Bank Association (ZBP), which unites commercial and cooperative banks, launched the PolishAPI project in the first half of 2018. However, the project itself goes beyond the banking sector and also includes: cooperative savings and credit unions (SKOK), the Polish Organisation of Non-banking Payment Institutions (PONIP) together with its associated members, the Polish Chamber of Information Technology and Telecommunications (PIIT), the Polish Insurance Association (PIU), National Clearing House (KIR), Loan Information Office (BIK), and Polish Payment Standard (PSP). The project is aimed at developing an interface enabling third parties to access payment accounts. From time to time updated versions of interface specifications are released, the latest one being issued in July 2019.</p> <p>In addition, KIR is developing HUB PSD2, which is going to facilitate the implementation and functioning of PolishAPI, through the integration of the systems of all entities which use and will use it in the future.</p> <p>Even though PolishAPI is perceived as a tool to standardize the approach of Polish banks to open banking solutions and reduce the costs of PSD2 implementation, it should be noted that it will not be used by the whole sector. Some banking groups are already developing their own standards and it is expected that Polish subsidiaries will be forced to use them too. In addition, some banks view the possession of their own API as a way to create a competitive edge, giving them a chance to distinguish themselves from competitors.</p>	<p>Taking into account the June 2019 EBA opinion and data gathered and analysed by the Polish regulator, the Polish Financial Supervision Authority (<i>Komisja Nadzoru Finansowego</i>) (PFSA), it considers that some Polish payment services market participants are not sufficiently prepared for such implementation.</p> <p>The PFSA is willing to adopt the solution proposed by the EBA and grant limited additional time to allow migration of the current authentication approaches to those that are fully compliant with the SCA rules. However, this can be applied only in relation to online payments based on payment cards and to contactless payments executed at payment terminals. In order to qualify for the grace period, a payment service provider must submit a "migration plan", which should be appropriate, realistic and agreed with the PFSA. If this is done, no other supervisory measures relating to the failure to use SCA will be applied against the payment service provider.</p> <p>It should be noted that from 14 September 2019, all the risks associated with the failure to comply with the SCA rules are fully borne by payment service providers. The length of the additional grace period has not yet been determined but will be decided in cooperation with the EBA.</p>
Spain	<p>Entry into force of Spanish regulation transposing PSD2 in Spain has sparked the initiation of open banking in Spain. This new legislation allows authorised third party providers (especially entities in the fintech area) (TPPs) to gain access to customer data, and promote greater competition in the industry. Banks are reluctant to collaborate and open their core data to these TPPs. As things currently stand, the TPPs have not received much information from the banks about what will happen from 14 September 2019.</p>	<p>The Bank of Spain is working on a circular along the lines of the BaFin circular in Germany. It looks like there will be a minimum delay of 14-18 months, but nothing has been confirmed beyond that. An official publication from the regulator is expected before the SCA rules enter into force on 14 September 2019. The current position is that market participants have not yet implemented SCA in their systems.</p>

Jurisdiction	What's the current market approach to open banking? How might it develop in the year ahead?	SCA delay: what's the plan? *
United Kingdom	<p>The Competition and Market Authority's Retail Banking Market Investigation Order 2017 (applicable only to the "CMA9", the 9 largest current account providers in the UK) established the Open Banking Implementation Entity (OBIE) as a central standards body and mandated use of specified APIs to provide open access to current account data of retail and small business customers. The OBIE's open banking standard is largely being adopted as the common UK standard for PSD2 compliance and is being used by the CMA9. While it's still early days, an Open Banking progress update in summer 2019 stated that 137 regulated providers now offer open banking services, made up of 85 third party providers (TPPs) and 52 account providers; 32 of these entities have at least one proposition live with customers.</p> <p>The UK regulator, the Financial Conduct Authority (FCA), is looking at expanding open banking into the wider concept of open finance, to apply to other financial products, notably in the savings sector.</p> <p>The OBIE is planning to set up "Premium APIs" to sit above the mandatory "Regulatory APIs" with the aim of providing a commercial incentive for banks to improve API performance and extend the open banking system, as well as providing additional functionality sought by TPPs.</p>	<p>The UK regulator, the Financial Conduct Authority (FCA), has announced the following:</p> <ul style="list-style-type: none"> <i>E-commerce card transactions:</i> an 18-month plan to extend the timetable for SCA implementation up to 14 March 2021. It will not take enforcement action against firms which do not comply with SCA from 14 September 2019 in areas covered by the plan, as long as there is evidence they have taken steps to comply with it. After the 18-month period, it expects all firms to have made the necessary changes and be able to apply SCA. <i>Online banking:</i> phased implementation of SCA by 14 March 2020. It is unclear how this relates to the 'adjustment period' mentioned below. <p>It has also been reported that the FCA will be applying a six-month 'adjustment period' for access interfaces. This suggests that it will not be taking action against either account servicing payment service providers or TPPs for breach of the Payment Services Regulations 2017/SCA Regulatory Technical Standards before March 2020. However, it will keep things under review and may shorten the period if 'sufficient progress' is made.</p>

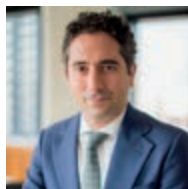
* Reflects the position as at 12 September 2019



Beata Balas-Noszczyk
Partner, Warsaw
T +48 22 529 29 20
beata.balasnosczyk@hoganlovells.com



Emily Reid
Partner, London
T +44 20 7296 5362
emily.reid@hoganlovells.com



Jaime Bofill
Partner, Madrid
T +34 913 49 81 90
jaime.bofill@hoganlovells.com



Dr. Richard Reimer
Partner, Frankfurt
T +49 69 962 36 414
richard.reimer@hoganlovells.com



Jeffrey Greenbaum
Partner, Rome
T +39 06 6758 2328
jeffrey.greenbaum@hoganlovells.com



Pierre Reuter
Partner, Luxembourg
T +352 26 4 26 201
pierre.reuter@hoganlovells.com



Dr. Sébastien Gros
Partner, Paris
T +33 1 53 67 16 23
sebastien.gros@hoganlovells.com



Victor De Vlaam
Partner, Amsterdam
T +31 20 553 3665
victor.devlaam@hoganlovells.com