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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of XXX
supplementing Directive 2015/2366 of the European Parliament and of the
Council with regard to regulatory technical standards for strong customer
authentication and common and secure open standards of communication
- Statement from the Czech Republic

Delegations will find in ANNEX statement from the Czech Republic on the above mentioned
Delegated Act.



**Ministerstvo financí
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23. 2. 2017

STATEMENT OF THE CZECH REPUBLIC ON RTS ON SCA AND CSC UNDER PSD2

Even though the Czech Republic can see there is a substantial support behind the final proposal of Regulatory Technical Standards on strong customer authentication (SCA) and common and secure communication (CSC) under revised Payment Services Directive (PSD2), **we in the end decided to raise an objection to this delegated regulation** as we think that in some aspects the text is not a balanced compromise. To be specific, we see there five particular problems connected with the proposal:

1. **General lack of subsidiarity.** The proposal doesn't take into account differences between member countries in regard to their payment services markets. There is no reason for defining uniform limits e.g. for contactless or low value payments, when there are substantial differences in prices of goods and services between members of the bloc. But not only the price levels between states differ – customer behaviour and the way different services and payment methods are being used can also vary. While it might be understandable to make contactless payment less convenient and more secure in countries where those payments aren't widely adopted yet, the same approach might cause customer backlash in countries with more than 90% card payments contactless already.
2. **Solving problems which don't exist.** By restricting the use of the exemptions in the RTS, the EBA and the Commission are trying to improve the security at the expense of customer convenience. We would understand this if there were indications that the current level of security was being insufficient or deteriorating rapidly. There are no such indications – at least in the Czech Republic (see the objections to the lack of subsidiarity). Of course handful cases of fraud exist – but in these customers are well protected by the liability (for unauthorized charges) of payment services providers (PSPs). And in cases where PSPs are unwilling to compensate their customers, an ADR body quickly decides they have to.

3. **Forcing customers to change their behaviour.** Response to a lot of our comments was that the change brought by the RTS to customer's behaviour is small and that the customers would get used to it. In our opinion, legislation shouldn't change the way people live their lives unless there is a serious and undisputed reason for that (which there is not in this case).
 4. **Insufficient use of risk-based approach.** Many of our objections would be solved by introducing general risk-based approach not only for remote electronic payments, but for other electronic payment transactions as well, this change was proposed by us on multiple times. Risk-based approach respects the principle of subsidiarity and allows PSPs with lower fraud rates not to raise unnecessary obstacles. We think there is no clear reason for introducing risk-based exemption for generally riskier remote electronic transactions and not e.g. for safer POS payments.
 5. **Unclear relationship to eIDAS regulation.** Following one of the possible interpretations, banks won't be able to issue electronic means of identification providing substantial (or high) level of assurance (according to eIDAS), because their means of identification would have to technically allow users to pass them to third parties to realize screen scraping, which is something that eIDAS regulation prohibits. If this interpretation was correct, current proposal of the RTS might seriously lower the benefits brought to customers by eIDAS.
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