

This client alert provides an overview of the revised time-lines for the application of Strong Customer Authentication (SCA) requirements in light of the June 2019 EBA Opinion. The below table sets out the responses of the principal EEA national supervisors and the current position on the delayed implementation of SCA.

## Overview of the Strong Customer Authentication requirements

The Second Payment Services Directive (PSD2) introduces SCA to improve the security of payments and limit fraud during the authentication process between the payment user and payee. SCA builds on the EBA's December 2014 Guidelines on the Security of Internet Payments. SCA is a means of authentication based on the use of two or more elements: Knowledge — something only the user knows (e.g., a password or PIN); Possession — something only the user holds (e.g., a card chip or a token); Inherence — something only the user is (e.g., a fingerprint or voice recognition). The breach of one element should not compromise the reliability of the others and authentication protects the confidentiality of customers' personalised security credentials (PSCs).

Although PSD2 has applied since 13 January 2018, in order to provide the payments industry with sufficient time to prepare, including addressing the technical challenges involved, SCA was not due to take effect until 14 September 2019. However, in light of industry concerns about their readiness to apply SCA to e-commerce card transactions, and to limit potential disruption to payment users and merchants, the European Banking Authority (EBA) accepted that national supervisors might give firms additional time and published an [Opinion](#) on 21 June 2019.

The EBA reiterates that the implementation date of 14 September 2019 as provided for by Regulatory Technical [Standards](#) is a legal requirement and cannot be set aside. It does, however, accept that "on an exceptional basis . . . to avoid unintended negative consequences for some payment service users . . . [national supervisors] may decide to work with payment service providers 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 . . . , and acquirers to migrate their merchants to solutions that support SCA." The EBA describes this forbearance as "supervisory flexibility." It is to be conditional on payment firms (1) setting up a migration plan, (2) agreeing that plan with their supervisor, and (3) executing it in an expedited manner. In this regard, supervisors are to monitor execution to ensure speedy compliance. In turn, the EBA is to monitor SCA implementation across the EU to ensure consistency. The EBA's Opinion sets out examples of compliant approaches to SCA implementation.



The EBA identifies, as an example, the area of e-commerce as especially challenging. Most national supervisors in their public statements to date appear to have limited their supervisory flexibility to such payments. Although payment firms may not face regulatory action for a failure to implement SCA, given that it remains a legal obligation to employ SCA, they remain liable for any consequential losses suffered by payment users.




## Responses to the proposed delayed implementation from EEA regulators




The table below sets out the response of the principal European supervisors to the EBA's Opinion. While a number of national supervisors were initially reluctant to concede further time virtually all have now agreed to do so on condition that firms notify and provide them with migration plans to achieve compliance. A number have adopted a more general approach while others, to a greater extent, require firms to justify their position individually. Most jurisdictions expressly limit the policy to e-commerce payments (as opposed to online banking and card-present transactions) and all emphasise that their liability to customers remains unaffected. Some regulators have also extended supervisory relief to Online Banking transactions to ensure that third party providers (TPPs) can continue to access customers' online payment accounts. Without extending supervisory relief to TPP transactions, TPPs who have not managed to migrate their customers to PSD 2 compliant interfaces would otherwise need to apply SCA measures when they access their customers' accounts with the account servicing payment service provider (ASPSP). Where SCA measures have not yet been implemented by the ASPSP, TPPs risk having their access to their customers' accounts blocked.




The EBA states that it will later this year communicate deadlines to complete migration plans. Most countries say they will adopt this timetable but a number have already stipulated deadlines.





Country	Has regulator responded to EBA opinion?	Is relief available?	New Implementation date	SCA Deadline Extension	Regulatory comment on delay
 Austria	<p>Yes. The Austrian regulator (Finanzmarktaufsicht or "FMA") published a statement and a corresponding press release on 19 August 2019.</p> <p>Documents available <a href="#">here</a> and <a href="#">here</a> (in German only)</p>	Relief available for e-commerce transactions only.	Not yet. An announcement is likely by the end of September 2019.	<p>The FMA is broadly in favour of an implementation period for e-commerce transactions only.</p> <p>The Austrian regulator is proposing an implementation period during which they will not enforce the application of SCA but it is not yet clear how long this implementation period will be.</p> <p>The extension will be for card payments in e-commerce transactions only. SCA requirements will still apply to other transactions such as card-present transactions.</p>	<p>The FMA has stated that the reasoning behind the delay to the introduction of SCA is that payment solutions that are currently commonly used do not conform to the requirements for SCA and that payments firms and/or other companies need more time for the technical implementation of SCA. Affected payment firms have been asked to provide the FMA with an implementation plan and to inform the FMA of their progress on an ongoing basis.</p> <p>SCA requirements have been transposed into Austrian law by Section 87 of the Austrian Payment Services Act (Zahlungsdienstegesetz or "ZaDiG"). This provision enters into force on 14 September 2019. Accordingly, and based on information publicly available, it appears that additional legislative intervention will be necessary to delay the introduction of SCA requirements.</p>
 Belgium	<p>Yes, the National Bank of Belgium (the NBB) issued an announcement on 27 August 2019.</p> <p>Documents available here in <a href="#">Dutch</a>, <a href="#">French</a> and <a href="#">English</a>.</p>	No specific relief available but the NBB will work with e-commerce industry to help implementation 'as soon as possible' after 14 September deadline.	N/A	<p>The NBB confirms that the application date of the SCA requirements remains 14 September 2019.</p> <p>However, in its announcement, the NBB also sets out its expectations with respect to the implementation of SCA for online trades (e-commerce). The NBB acknowledges the challenges for Belgian card issuers and Belgian acquirers for card transactions in the context of e-commerce in meeting the deadline of 14 September 2019.</p> <p>The NBB indicates that it will cooperate with industry stakeholders (i.e. payment service providers, card schemes, merchants and consumer representative organisations) to agree on a reasonable and acceptable plan to migrate the e-commerce industry towards SCA implementation for card payments as soon as possible after the 14 September 2019 deadline. The length of the migration plan is not yet known.</p>	<p>According to the NBB's announcement, the migration plan that is to be agreed upon between the NBB and the industry stakeholders will contain a blueprint for compliance and readiness, a timetable and key milestones and targets to achieve improved customer authentication security and a reduction of payment fraud.</p> <p>As soon as the migration plan is finalised and agreed by the NBB, it will be published on the NBB's website.</p> <p>The NBB expects that those being targeted by the migration plan, i.e. the relevant payment service providers in particular, will fully comply with the migration plan and the identified milestones and targets, in order to ensure full compliance with the SCA requirements by the final delivery date of the migration plan.</p> <p>To benefit from the migration plan, payment firms will have to provide the NBB with sufficient evidence that they have taken the appropriate steps to ensure compliance with the SCA requirements by the final delivery date of the migration plan.</p>

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 Denmark	<p>Yes. The Danish Financial Supervisory Authority (FSA) published a statement on 4 September 2019.</p> <p>Documents available <a href="#">here</a> (in Danish only)</p>	Relief available for e-commerce transactions only.	14 March 2021	The Danish FSA has agreed an 18-month implementation period for SCA in relation to internet card transactions only.	<p>The Danish FSA will carry out concrete and operational plans to ensure stakeholders' compliance with the SCA requirements no later than 14 March 2021. At the end of the 18-month period, the FSA expects all firms to have made the necessary changes.</p> <p>The implementation period does not change the fact that the legal application date of SCA is 14 September 2019. This is relevant in relation to the requirements on liability and responsibility in the Danish Act on Payments, which will continue to apply.</p>
 France	<p>Yes. Banque de France. No statement is available.</p>	Relief available for e-commerce transactions.	December 2020	The French regulator has agreed a migration plan for the next three years (starting from June 2019). It is unclear whether the delay applies to card-present transactions but the report issued by the regulator and the migration plan focuses on e-commerce transactions.	<p>A transition period has been discussed by the Banque de France with the relevant market players (banks, merchants, card payment systems, etc.). The objective is that SCA should be implemented for a majority of customers and transactions by December 2020, and fully implemented within three years.</p> <p>The Observatory for the Security of Payment Means published a statement on the migration plan on 11 September 2019 (<a href="#">here</a>).</p>
 Germany	<p>Yes. The Federal Financial Supervisory Authority (BaFin) has published a statement on 21 August 2019.</p> <p>Documents available <a href="#">here</a> (in German)</p>	Relief available for e-commerce transactions.	To be decided	<p>Payment firms based in Germany may temporarily continue to execute online credit card payments on the basis of card numbers and CVC without applying SCA.</p> <p>BaFin will determine the appropriate grace period after consultation with market participants, the EBA and the other European national supervisory authorities. Meanwhile, BaFin expects all market participants to adapt their infrastructure and take the necessary measures to implement SCA as soon as possible. For this purpose precise migration plans must be developed.</p> <p>The extension is limited to online credit card payments and does not apply to other transactions, such as card-present transactions.</p>	<p>BaFin's intention in introducing an implementation period is to prevent disruption in online payments and to facilitate a smooth transition to SCA requirements. According to BaFin's assessment, German card issuers are well prepared to apply SCA. However, many German online merchants are not SCA-ready.</p> <p>The usual security level for online payments should be maintained. Civil liability rules, such as between the credit card holder and the payment service provider, remain unaffected by BaFin's statement.</p>

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 Italy	<p>Yes. The Bank of Italy published a statement on 1 August 2019.</p> <p>Documents available <a href="#">here</a> (in Italian)</p>	Relief available for e-commerce transactions only.	To be decided based on final deadline to be set by EBA.	<p>The Bank of Italy has granted a limited extension for card-based online payments. The extension will be based on the final deadline set by the EBA and will be subsequently communicated to the market, in order to allow payment services providers to better comply with the new security requirements for electronic payment transactions.</p> <p>Card-present transactions will be subject to SCA requirements from the 14 September 2019 deadline.</p>	<p>During the grace period payments carried out without SCA will still be accepted. However, the rules on charges and responsibilities in the event of fraud remain applicable for payments carried out without the security requirements mandated by law.</p> <p>Payment firms wishing to make use of the extension must submit a detailed migration plan that includes communication and customer-readiness measures, in relation to both merchants and cardholders.</p>
 Luxembourg	<p>Yes. The Luxembourg Commission de Surveillance du Secteur Financier (CSSF) published a statement on 30 August 2019.</p> <p>Documents available <a href="#">here</a></p>	Relief available for e-commerce transactions.	To be announced in the last quarter of this year.	<p>The extension deadline has not yet been determined. The CSSF will participate in future discussions on an EU-wide timetable to be specified by the EBA (after the collection and processing of national individual data).</p> <p>The extension applies only to e-commerce card payment transactions.</p>	Entities supervised by the CSSF that wish to make use of this extension must notify the CSSF and submit a detailed migration plan in accordance with the timetable to be indicated by the EBA. This plan should include, among other things, the entity's planned communication initiatives to inform and involve its merchants and/or users (consumers and businesses) in the migration to SCA.
 Netherlands	<p>Yes. The DeNederlandscheBank (DNB) published a statement on 8 August 2019.</p> <p>Documents available <a href="#">here</a> (in Dutch)</p>	Scope of relief not yet determined.	Not known	<p>The DNB has not been as definitive as other European regulators with their approach on the delays permitted by the EBA Opinion. The DNB intend to allow market parties that were unable to prepare for the introduction of SCA for credit card transactions to have limited additional time. The length of the extension has not yet been determined.</p> <p>It is unclear whether the extension will apply to both e-commerce and card-present transactions.</p>	The DNB has distributed a questionnaire prepared by the EBA on SCA readiness to multiple payment firms to map possible transition issues in the Netherlands. Based on these responses, migration plans will be developed with which the DNB will help coordinate and implement.

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 Norway	<p>Yes. The Norwegian regulator Finanstilsynet issued a short statement on 21 June 2019 against an extension, however, this position has now been superseded.</p> <p>Documents available <a href="#">here</a> and <a href="#">here</a> (in Norwegian).</p>	Relief available most likely for e-commerce transactions only but not yet determined.	To be decided	<p>The Finanstilsynet released an update on 20 August 2019 noting that payment service providers may apply for an extension of the 14 September deadline. While this contradicts its earlier June statement rejecting an extension, it appears that there was considerable push back from new market entrants, as well as a number of historically non-compliant providers.</p> <p>It is unclear whether the extension applies to both e-commerce and card-present transactions although the former seems most likely.</p>	<p>Payment service providers who wish to rely on the extended deadline should contact the Finanstilsynet to agree an extension.</p> <p>In a circular letter dated 6 September 2019, the Finanstilsynet states that an application for an extension must contain a timetable for implementation of the new requirements. The EBA is expected to set a final deadline for implementation of the SCA. Until this is announced, the Finanstilsynet assumes that firms will accept or refuse non-SCA transactions in accordance with existing security policies.</p>
 Poland	<p>Yes. The Polish Financial Supervision Authority (KNF) released guidance on 19 August 2019 allowing individual payment service providers to agree migration plans with the FSA.</p> <p>Documents available <a href="#">here</a></p>	Relief available if notified to the KNF before the deadline.	To be decided	<p>No supervisory measure relating to the failure to apply SCA will be applied to payment service providers who notify the KNF Board, before 14 September 2019, of the need to apply the solution in question and then submit an appropriate realistic 'migration plan', as agreed with the KNF Board.</p> <p>The extension applies to online payments based on payment cards and to contactless payments executed at payment terminals.</p>	<p>The KNF will release further guidance on SCA after 14 September.</p> <p>The risk associated with the failure to use SCA after 13 September 2019 is borne by payment service providers.</p>
 Spain	<p>Yes. The Bank of Spain ("BdE") published a statement on 11 September.</p> <p>Documents available <a href="#">here</a></p>	Relief available most likely for e-commerce only but not yet determined.	To be decided	<p>Supervisory flexibility is available providing payment firms have submitted and agreed on migration plans with the BdE and execute them in an expedited manner. There is no reference to any specific time scale.</p> <p>The extension is potentially limited to e-commerce but this is unclear from the statement.</p>	<p>A UNACC industry group press release on the SCA extension refers to the three main Spanish banking associations (AEB, CECA and UNACC) making representations to the BdE with respect to e-commerce transactions. It refers to the development of an action plan, currently being drafted, to fully adopt SCA by means of gradual implementation within a reasonable time period.</p>



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 Sweden	<p>Yes. The Swedish Financial Service Authority (Finansinspektionen) published a statement on 13 September 2019.</p> <p>Documents available <a href="#">here</a></p>	<p>Relief available to e-commerce transactions but only through submitting an implementation plan to the Finansinspektionen.</p>	<p>No. Firms to apply individually</p>	<p>Finansinspektionen considers there are already sufficient technical solutions on the Swedish market for most e-commerce card transactions to comply with SCA requirements (e.g. Bank ID). However, firms that need more time to apply SCA may submit a detailed implementation plan to Finansinspektionen aligned with the timetable to be specified by the EBA later this year.</p>	<p>Implementation plans must contain a firm's planned communication activities to inform e-merchants and payment service users about the new requirements. Finansinspektionen will review the content of the plan and respond to each firm.</p> <p>The extension is limited to e-commerce card transactions.</p> <p>The fact that a payments firm needs to prepare a migration plan to transition to approved methods for authentication does not affect the application of the law that applies to the relationship between firms and payment service users.</p>
 UK	<p>Yes. Financial Conduct Authority. An announcement was made on 13 August 2019 following the EBA's Opinion.</p> <p>Documents available <a href="#">here</a></p>	<p>Relief available for e-commerce transactions and some more limited relief for online banking.</p>	<p>14 March 2021</p>	<p>The FCA has agreed an 18 month implementation period for SCA in relation to e-commerce transactions only. There is a phased roll-out plan for the application of SCA to e-commerce. Card-present transactions will be subject to SCA requirements from the 14 September 2019 deadline.</p> <p>The FCA has noted the potential disruption to TPPs and so has agreed an adjustment period for the application of SCA to online banking until March 2020 (<a href="#">here</a>).</p>	<p>The FCA will not take enforcement action against firms if they do not meet the relevant requirements for SCA from 14 September 2019 in areas covered by the agreed plan, where there is evidence that they have taken the necessary steps to comply with the plan. At the end of the 18-month period, the FCA expects all firms to have made the necessary changes and undertaken the required testing to apply SCA.</p> <p>The FCA action is based on a <a href="#">plan</a> drawn up by UK Finance.</p>

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**18 September 2019**