



FEDERATION
BANCAIRE
FRANCAISE

CONSULTATION ON COMMON UNDERSTANDING OF THE OBLIGATION IMPOSED BY EUROPEAN REGULATION 1781/2006 ON INFORMATION ON THE PAYER ACCOMPANYING FUNDS TRANSFERS

1. Introduction

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 500 commercial and cooperative banks. FBF member banks have more than 25,500 permanent branches in France. They employ 400,000 people, and service 48 million customers.

The French banking industry thanks CESR, CEBS and CEIOPS for giving the opportunity to comment on the proposed common understanding related to European Regulation 1781/2006. FBF and the French industry recognize and support the objectives of the Regulation to implement FATF Special Recommendation 7 and fully agreed to work on a better transparency of electronic funds transfers.

FBF members support a comprehensive conception of the Regulation which includes works and comments rising from payments and AML professionals.

2. General

2.1 The Regulation shall be technically workable:

FBF pointed out the importance of the technical means to scan all the wire transfers received from PSP of the payer in order to detect the lacking information. For very small entities, manual checking might be the only option as large scale industries are processing billions of wire transfers on a daily basis with a high level of automation. Consequently, the issues cannot be identical for all the industry.

The discrepancies between various technical standards and the variable field for identical information make it very difficult to efficiently filter the payment and may cause an unbearable number of hits that will render down the efficiency of the process.

The common understanding remains silent on the interpretation of meaningless information and the technical and practical ways of dealing with such wire transfer. FBF underline the

tremendous difficulties in dealing with meaningless information, its subjective ground, mainly when it is not obvious but stem from the lack of understanding of foreign culture.

Considering those three technical points and the difficulties to mitigate the risk arising from defaulting electronic payments, FBF would like the common understanding to emphasize the role of the PSP of the payer and balance the liabilities between the PSP of the payee and the PSP of the payer.

2.2 The common understanding shall not add to the Regulation

FBF supports a “all the Regulation but only the Regulation” principle, in order to impose the same obligations to all European entities and avoid any competition discrepancies within Europe. Therefore, the common understanding shall not be seen as an extension to the Regulation adding obligations but rather as a clarification to support the industry in complying with the rules. As a matter of example, the common understanding adds to the regulation when it requests the PSP to inform the supervisor of the defaulting PSP instead of the FIU. Another example is the introduction of the concept of bona fide which could lead the supervisor to support the contrary (mala fide) and sanction the PSP acting with bad faith. It will then, reverse the burden of the proof.

2.3 The risk based approach

French banking industry promotes flexibility with regards to the proposed clarifications. It is considered that the risk based approach is currently the better way for complying with the objectives pursued by Special Recommendation 7. However, we feel that combining international rules related to anti money laundering and regulation on transparency of wire transfers do not pursue the same objectives even though it is closely enough to share the same approach. The consequences are different as written below (question 4).

3. Answers to the questions

3.1 Questions 1 and 2:

We strongly support option B. It is considered that mandatory time span in collecting information is just not realistic considering technical limits and up to a certain point, the inadequacy of some foreign country to provide the right information in the required time frame.

3.2 question 3

Considering the above said, FBF supports a risk based approach in the determination of criteria which shall not be imposed by the common understanding but proposed as example, each organization being free to add or take away specific criteria that will match or not match the feature of its customers.

The consequences of defaulting transfer shall also be endorsed by each organization and termination of the commercial relationship considered on a risk based approach by each bank.

3.3 question 4

Even if it is clear that the failure to supply information shall not be confused with suspicious activity, the FBF does not support per se a specific reporting to the forum of supervisors. Blacklisting any PSP can be very damaging to the entire industry and FBF recommends that the committees remain very cautious on their decision to organize PSP's blacklisting. As it is clearly stated in article 9 of the Regulation, “the payment service provider of the payee shall report that fact to the authorities responsible for combating money laundering or terrorist financing”. FIU shall be free to decide the opportunity of reporting any PSPs to the forum of supervisors and if any, this report shall not mention the reporting banks.