



DANISH BANKERS ASSOCIATION

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Comments from the Danish Bankers Association on the consultation on the common understanding of the obligations imposed by European Regulation 1781/2006

The Danish Bankers Association welcomes and supports the work of reaching a common understanding of the obligations imposed by the European Regulation 1781/2006.

Firstly, it is our overall concern that The Common Understanding should not impose obligations that are more restrictive than those introduced by the Regulation itself, hereby introducing further costs to administrate the Regulation, and subsequently not creating the suggested level playing field. Secondly, we believe that a common understanding should as a minimum address the practical difficulties met by the banking sector when carrying out the obligations in the Regulation.

The following comments to the proposed text are divided into three parts. In the first part we give our answers to the questions raised in the consultation, the second part addresses specific issues in the proposed text and the third part points out issues, which are not covered by the proposal, but have led to disagreements regarding the interpretation of the Regulation.

Questions raised in the consultation

Question 1 (and 2): Procedures for the PSP in relation to the following up requests for complete information

Firstly, it is our opinion that the recommendation of a deadline and consistent reminders should be left out of The Common Understanding, or put as an option clearly stating that it is left to the individual PSPs how they wish to follow up on the requests. Therefore we in principle prefer option B to A.

By introducing a deadline and consistent reminders The Common Understanding is imposing more administration on the PSP than the Regulation requires and hence the solution adds to the cost of detecting if the information on the payer is complete, which will eventually increase the overall cost of cross border transfers. It should be left to the individual PSP how it wishes to follow up on the request for complete information.

Secondly, in light of the FATF threshold of €/\$1,000, the European PSPs will end up repeatedly sending requests for information they are not bound to receive since the payers' PSPs do not have the information.

26. maj 2008

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File no. 115/34

Doc. no. 192107-4

Thirdly, it is our concern that by implementing option B in question 1 and 2 it will not solve the main issue regarding incomplete information, which is that PSPs have different definitions of what complete information is. It is very important to address this issue in The Common Understanding, as this can not be solved bilaterally between the PSPs, in particularly seen in the light that PSPs have the right to charge fees when sending requests for complete information, which may lead to undesired higher costs of cross boarder transfers.

Therefore we do not believe that option B – nor A for that matter – can stand alone without addressing more practical issues regarding the Regulation. Please see 'Issues not covered by the proposal' further down in this response – for further information.

Question 2 is per se not relevant in the Danish Banking community, since the majority of the banks claim that they execute all payments unless they look suspicious according to AML standards.

Question 3: Identifying regularly failing PSPs

It is a useful gross list of criteria and we do not have any other criteria to add to the list. In most cases the classification of a PSP as a regularly failing PSP is made by a subjective assessment of the criteria on the list with a starting point based on criterion b: '...an absolute number of still incomplete transfers...'.

Question 4: Coordination mechanism for monitoring regularly failing PSPs

We agree with the overall fact that restricting and terminating a business relationship is a business decision and should as such be made by the PSPs, but we acknowledge that it may not be the best way to solve the issue at hand.

In addition to the reasons mentioned in section 4.4 it needs to be stressed that one PSP restricting or terminating a business relationship with a regularly failing PSP may not have the desired effect that the failing PSP decides to follow the Regulation, on the contrary the failing PSP may choose to route the transactions through other channels, hence the problem is passed on to a new PSP.

We therefore welcome the idea of a coordination mechanism, which we believe should consist of supervisors as authorities of the PSPs. Moreover they have access to compare relevant information in order to judge if a PSP is failing in more than one business relationship.

The decision making process could be as follows:

1. A PSP is reported as regularly failing to supply the required information to the supervisor (A) by one or more PSP. If the supervisor finds the reports justified;

2. The supervisor (A) reports the problem to the supervisor (B) of the failing PSP.

3. The supervisor (B) addresses the failing PSP with the complaints, in order to make the failing PSP comply with the regulation.

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Only in very severe cases where the PSP does not comply with the Regulation the supervisors may order other PSPs to end their business relationship with a failing PSP or otherwise sanction the PSP for failing to comply with the regulation, if there is legal support for this. The decision has major consequences for the PSP and should only be taken in a forum consisting of the supervisors.

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Question 5: Existing industry practise

No comments.

Issues in the proposal

2. Common understanding on Article 8 of the Regulation

We do not support the proposal of encouraging PSPs to apply filters to detect obvious meaningless information as it is only required by the Regulation to validate if there is information in the message and not the information itself. In addition, we do not believe that the filters will create a level playing field.

Although we understand the intention of the proposal as a voluntary provision, we recommend that it is left out of the final text for the time being. The proposal of additional filters can not stand alone without a common understanding of what complete information in Article 4 and 6 as well as a definition of what obvious meaningless information is.

Without a common understanding among the PSPs of Article 4 and 6 in the Regulation, it will be expensive and difficult to install sufficient filters as well as to retrieve correct information from PSPs since the PSPs will be entitled to reject giving further information if it regards the information given to be complete.

Therefore we strongly encourage that The Common Understanding addresses the issue of how "complete information" in Article 4 and 6 should be interpreted, instead of proposing additional features to the validation of the information given. It is our experience that the definition of complete information varies from PSP to PSP and the lack of a common understanding of complete information leads to unnecessary disagreements.

5. Reporting to the authorities

We accept the fact that the procedures related to requirements in the Regulation need to be documented but we encourage the parties to come to an agreement which minimizes extra audits that do not provide any benefit to the process.

6. Threshold

As stated above, seeing The Common Understanding in light of the FATF threshold of €/\$1,000, the European PSPs will end up wasting money by repeatedly sending request for information regarding payments below the threshold from a non-European PSP, which is not able to meet their request, and is unlikely to have incentive to meet the European requirements. Therefore, we cannot support the recommendation in The Common Understanding, and we believe it is up to the individual PSP to handle these issues.

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Issues not covered by the proposal

The following issues are not covered by the proposal, though it is the Danish Banking community's experience that the issues lead to misunderstandings between the PSPs. A common understanding would therefore be useful.

Increasing cooperation between the involved PSPs

There is a need for cooperation between all PSPs involved in the original transfer (i.e. payer's PSP and intermediary PSP(s)) when obtaining complete information about the payer.

Today, the intermediary PSP is not obliged to help the payee's PSP to obtain complete information, as it is regarded to be an issue between the payee's and payer's PSP. It would be easier to send requests for information automatically, if the intermediary PSPs were obliged to forward the requests to the previous PSP, hence the request follows the original chain of PSPs.

The understanding of complete information – a definition

The Common Understanding should address the interpretation of Article 4 and 6 since it is our experience that the definition of complete information varies from PSP to PSP. Two of the more common issues of dispute are whether a risk-based "Know Your Customer" (KYC) judgment by the payer's PSP or a Field 20 Sender's reference (a 16 digit number in a SWIFT MT 103 Customer Transfer, referring to the sending PSP) is sufficient to fulfill the information requirements.

Risk-based KYC judgment

On some occasions payer's PSP rejects to give a satisfactory answer to the request for complete information by referring to the fact that the payer is a trusted customer, hence complete information is not needed from risk-based KYC judgment. If the interpretation is in fact correct it opens up a grey zone, as to when a risk-based judgment to a transfer has been applied or the payer's PSP does not have the needed information.

Field-20 Sender's reference

It needs to be clarified if Field 20 should be considered to be sufficient information to meet the requirements in the Regulation. Since the number in Field 20 will change each time a transfer is forwarded to a new PSP, it cannot be considered as a unique identifier. But in fact it is the experience of several Danish banks that their request for complete information has been

discharged with reference to Field 20 as sufficient information in accordance with the Regulation.

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It is our opinion that The Common Understanding should give more explicit guidance on how the requirements should be interpreted, as well as to underline if a risk-based KYC approach can serve as valid information about the payer, and whether Field 20 may serve as a unique and satisfactory identifier in relation to the Regulation 1781/2006.

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In addition to this there is also a need to identify transfers, which are exempted from the Regulation per se but may lead to different interpretation by the involved PSPs, such as a SWIFT MT103/CORT when a Customer Transfer is covering what in fact is a bank to bank transfer.

Recommendations on correct automatic validation

It is the experience of the Danish banks that it varies how the transfer messages are filled in, which makes it difficult to make a standard automatic validation, e.g. in some areas it is common to limit the information in Field 50 – Ordering Customer (account number + name and address) to two lines, where as this could be seen as an indication of incomplete information in other areas, and it is the same case with a P.O. Box address, it is not considered to be valid address in all countries.

All in all, we welcome a clarification of the understanding of complete information and correct validation, since we do not see it as an appropriate solution to report PSPs with a differing interpretation of the Regulation to the authorities, as long as there are no guidelines as to what complete information is.

A more in dept investigation of the issue is needed in order to make useful guidelines covering the full spectrum of different interpretations of correct information and to reach a common understanding on correct validation. It would be our pleasure to supply any information needed on the issue.

It is our overall impression that the proposal is introducing an unnecessary restrictive approach to the understanding of the Regulation without addressing the issues at hand such as a common understanding of complete information; hence it may lead to further misunderstandings without an understanding of the basic requirements in the Regulation. It may as well impose unnecessary administration cost for all involved parties without serving the purpose of the Regulation.

Yours sincerely

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