FSB FINANCIAL STABILITY BOARD

Recommendations to Promote Alignment and Interoperability Across Data Frameworks Related to Cross-border Payments: Consultation report

Response to Consultation

Spanish Banking Association

General

1. **Is the proposed scope of the recommendations appropriate for addressing frictions arising from data frameworks in cross-border payments?**

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2. **What, if any, additional issues related to data frameworks in cross-border payments, beyond those identified in the consultative report, should be addressed to help achieve the G20 Roadmap objectives for faster, cheaper, more accessible and more transparent cross-border payments?**

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3. **Is the proposed role of the Forum (i.e. coordinating implementation work for the final recommendations and addressing existing and newly emerging issues) appropriate?**

   The role of the forum in identifying gaps and inconsistencies is essential as having this information is a necessary condition for understanding the issues that have to be addressed.

   Moreover, it should be acknowledged that some divergencies and inconsistencies in data frameworks stem from provisions in horizontal regulations or even in country's Constitutions or fundamental laws. Consequently, the actions proposed by the Forum to overcome the frictions in cross-border payments created by these disparities should factor in this reality.

Section 1: Addressing uncertainty about how to balance regulatory and supervisory obligations

4. **Discussions with industry stakeholders highlighted some uncertainties about how to balance AML/CFT data requirements and data privacy and protection rules. Do you experience similar difficulties with other types of "data frameworks" that could be addressed by the Forum? If so, please specify.**

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5. **What are your suggestions about how the Forum, if established, should address uncertainties about how to balance regulatory and supervisory obligations?**

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6. **Are the recommendations sufficiently flexible to accommodate different approaches to implementation while achieving the stated objectives?**

It has to be noted that the growing worldwide adoption of ISO 20022 in payment systems is an opportunity to achieve greater interoperability of messaging standards. However, it shall be avoided mandating the inclusion of new information in payment messages as this is usually costly, time and resource consuming. The market should be the one that defines the standards and the interoperability rules, such as in the SEPA One-leg Out (OLO) Instant Credit Transfers (OCT Inst) scheme defined by the European financial industry accommodating actual needs.

Section 2: Promoting the alignment and interoperability of regulatory and data requirements related to cross-border payments

7. **The FSB and CPMI have looked to increase adoption of standardised legal entity identifiers and harmonised ISO 20022 requirements for enhancing cross-border payments. Are there any additional recommendation/policy incentives that should be considered to encourage increased adoption of standardised legal entity identifiers and the CPMI's harmonised ISO 20022 data requirements?**

Actions in favour of standardization are positive, but they can also have high implementation costs that have to be well balanced. In addition, although supportive of actions to increase international standardization, obligations can have high implementation costs. For instance, imposing the use of LEI would be costly and problematic. The adoption of LEI by payment parties (end users) is still very low in many jurisdictions and not all of them have a LEI and some of them cannot even obtain one. A potential mandatory use of this attribute is not desirable, since it has relevant impacts that go far beyond the payment transactions (the obtainment, validation and guarantee that the attribute is correct requires a system that provides reliability related to data from its issuance/generation to its storage and transmission for payment purposes). For that reason, the use of other identifiers locally accepted or widely accepted such as BIC shall not be disregarded even though they might primary be linked to a given network.

8. **Recommendation 4 calls for the consistent implementation of AML/CFT data requirements, on the basis of the FATF standards (FATF Recommendation 16 in particular) and related guidance. It also calls for the use of global data standards if and when national authorities are requiring additional information. Do you have any additional suggestions on AML/CFT data-related issues? If so, please specify.**

It should be taken into account that FATF Recommendation 16 is under review and some of the envisaged options would be highly costly to implement.

9. **Industry feedback highlights that uneven regulatory expectations for sanctions compliance create significant frictions in cross-border payments affecting the Roadmap objectives. What actions should be considered to address this issue?**

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10. **Do the recommendations sufficiently balance policy objectives related to the protection of individuals' data privacy and the safety and efficiency of cross-border payments?**

Model clauses, binding corporate rules, commercial agreements and certification schemes are positive and useful tools. Nevertheless, in the absence of those tools, local legislations should not prohibit the possibility that a payment user consents the processing of their data abroad if necessary for the execution of cross-border payment.

Also, the significant impact (economic, operational, ...) that introducing requirements aimed at enhancing cross-border payments could have on local payment services and infrastructures should be taken into consideration.

In view of the above, a rewording of Recommendation 8 is suggested: "Relevant authorities should adopt and enforce consistent standards in domestic privacy and data protection regimes applicable to cross-border payment processing and identify appropriate cross-border data transfer mechanisms.

Regulatory consistency and adequacy assessments or similar mechanisms are useful tools, but situations where these clauses do not exist should also be addressed in a way that do not affect the processing of local payments.

Section 3: Mitigating restrictions on the flow of data related to payments across borders

11. **The FSB understands that fraud is an increasing challenge in cross-border payments. Do the recommendations sufficiently support the development of data transfer tools that specifically address fraud?**

The cross-border sharing of fraud data considered in this recommendation is not only welcomed but keenly awaited. The best way to promote it is by providing a legal basis in local legislations enabling this possibility in line with the European Commission proposal for the review of PSD2 (Proposal for a Payment service regulation-PSR proposal), although it has to go further and enlarge its scope.

Also, it would be highly useful that countries made adequacy decisions or, at least, published lists of countries with equivalent data protection regulations.

12. **Is there any specific sectoral- or jurisdiction-specific example that you would suggest the FSB to consider with respect to regulation of cross-border data flows?**

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Section 4: Reducing barriers to innovation

13. How can the public sector best promote innovation in data-sharing technologies to facilitate the reduction of related frictions and contribute to meeting the targets on cross-border payments in 2027?

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14. Do you have any further feedback not captured by the questions above?

We are in favour of relevant authorities considering potential impacts on consumers and cross-border payments market participants when designing their data-related policies. However, there are doubts on the ability to effectively operationalize this commitment.