

Recommendations for Regulating and Supervising Bank and Non-bank Payment Service Providers Offering Cross-border Payment Services: Consultation report

Response to Consultation

Spanish Banking Association

Introduction

- 1. Do the definitions contained in the report provide sufficient clarity and establish the common understanding necessary to facilitate the practical implementation of recommendations proposed in this report?**

Despite both banks and non-banks are subject to the FATF international standards for combating ML and TF, FATF standards are not always included in a single "horizontal" regulation, what creates inconsistencies and gaps in their practical implementation.

- 2. What adjustments are required to the draft definitions to improve clarity?**

Although including "account information service providers" in the definition of PSPs is aligned to PSD2, account information services should have the consideration of data services and not payment services and, therefore, be left out of scope for the purpose of this consultation.

- 3. What other terms should be defined in this section?**

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- 4. Does the explanation regarding the scope of the report provide sufficient clarity to promote the intended understanding of the recommendations?**

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Section 1: The role of banks and non-banks in cross-border payments

- 5. Do the descriptions of the roles of banks and non-banks in providing cross border payment services adequately reflect current practices?**

The positive view of correspondent banking business in section 1.1. ("Banks that provide correspondent banking services play a unique and critical role in the context of cross-border payments.") is to be noted and welcomed.

Section 2: Cross Border Payment Frictions and Risks

- 6. What additional risks or frictions, within the scope of this report, are created by potential inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payment services?**

Regarding the risks associated with cross border payments services it could be helpful adding metadata e.g. on the controls and processes performed by a PSP before executing or forwarding a payment, so that the receiving party can decide in an informed manner which controls to make or even duplicate.

Furthermore, this would be of help in view on the report statement that says “non-bank PSPs are more likely to engage in “occasional transactions” rather than transactions originating from established customer relationships”. This leads to situations in which non-bank PSPs do not necessarily perform their own KYC/AML/CTF checks but rely on those done by another PSP (i.e. ASPSPs – usually a bank). This is particularly relevant in cases where the PSP offers payment services that “connect” local payment systems or services from different jurisdictions. In these cases, the PSP offering the cross-border payment service should perform additional checks ensuring that the payment complies with the applicable KYC/AML/CTF regulations of the “connected jurisdictions”.

Section 3: Principles for developing recommendations

- 7. Do the identified principles provide sufficient support and appropriately frame boundaries for the recommendations in the report?**

Related to the principles, in addition to cooperation, coordination and information sharing within and across jurisdictions, another guiding principle should be added: recommendations shall be made in a way that they take advantage of existing local practices and minimize the impact on local payment ecosystems.

Also, one of the ideas conveyed in section 4 should be included as a guiding principle: the recommendations should be made and implemented in ways that do not jeopardize jurisdiction-specific policy goals, such as the robust entity-level regulation and supervision to which internationally active banks are subject.

Section 4: Recommendations for improving alignment of PSP regulatory and supervisory regimes

- 8. Are the recommendations sufficiently granular, actionable, and flexible to mitigate and reduce frictions while accommodating differences in national legal and regulatory frameworks and supporting the application of proportionality?**

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- 9. To what extent would the recommendations improve the quality and consistency of regulation and supervision of non-bank payment service providers (PSPs) active in cross-border payments services?**

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- 10. For the purpose of identifying material areas to be addressed from a priority and effectiveness perspective, should the report categorise the identified frictions created by inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payments services in terms of focus or order in which they should be addressed?**

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- 11. Recommendation 5 focuses on domestic licensing. How and to what extent would licensing recognition regimes between jurisdictions support the goal of strengthening consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services? What risks need to be considered?**

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- 12. There are no comprehensive international standards for the regulation, supervision and oversight of non-bank PSPs and the cross-border payment services that they offer. Is there a need for such international standards?**

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General

- 13. What, if any, additional issues relevant to consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services should be considered in the report?**

As stated above, AIS should not be considered a payment service opposite to the PSD2 principle, but data service providers.

In principle, some sort of common international rulebook on non-bank PSPs regulation and supervision seems beneficial. This rulebook could include best practices and rules established in countries that have already an approach to this matter. Nevertheless, this should be addressed in a separate consultation, preceded by a deeper assessment of existing regulatory frameworks.