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Email

CESR/CEBS/CEIOPS
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Brussels, 25 June 2008

Subject: *EBF answer to CESR/CEBS/CEIOPS consultation on common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees*

Dear Sir,

The European Banking Federation would like to thanks CESR, CEBS and CEIOPS for the opportunity to comment on the common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees. You will find attached the EBF answer to the consultation.

Yours sincerely,



Guido Ravoet

Enclosure: 1 (D1207)

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**EBF POSITION on CESR/CEBS/CEIOPS CONSULTATION on
COMMON UNDERSTANDING of THE OBLIGATIONS IMPOSED by
REGULATION (EC) 1781/2006 on INFORMATION on the
PAYER ACCOMPANYING TRANSFERS of FUNDS**

The European Banking Federation welcomes the opportunity to comment on the Common Understanding of the 3L3 Committees with regard to the obligations imposed by Regulation (EC) 1781/2006 on information on the payer accompanying transfers of funds.

Based on its members' experience and feedback, the EBF was able to collect the following general and specific comments as well as the following answers to the questions of the consultation.

General comments

Status of the Common Understanding: The Common Understanding should not impose new obligations

The EBF would first like to stress that it believes that the Common Understanding should not impose obligations that are more restrictive than those introduced by Regulation 1781/2006 and hereby introducing further costs for the administration of the Regulation, and not creating the suggested level playing field. It is our understanding that the Common Understanding will not be an extension of the Regulation: we understand it as a means of clarification to support regulators in the monitoring of the implementation of the Regulation.

Consideration of the high volume and automated environment

The EBF fully supports the objectives of Regulation 1781/2006 to implement FATF Special Recommendation VII to increase the transparency of electronic funds transfers but would like to stress the need to have in mind that the entire process has to be effective in high volume environment: electronic funds transfers worth of billions of Euros are daily processed with a high level of automation. Obligations of the PSPs should therefore be realistic, practical and unequivocal, and their impact on existing payment processes should be limited and focused on the most cost efficient methods for achieving the desired ends.

Specific comments

Common Understanding on Article 8 of the Regulation

The EBF believes that it is not realistic to impose to all banks applying filters to detect at the time of processing (ex ante) obvious meaningless information. EBF members are not in favour of measuring failures based on precise indicators. A risk-based approach based on the activities, business, is indeed to be preferred.

Common Understanding of Articles 9§1 and 10 of the Regulation

- The PSP becomes aware, when receiving the transfer, that it is incomplete
The current wording (§ 13) is misleading since it could be interpreted as if the preferred course of action for PSPs to take should be to reject transfers when becoming aware that information is incomplete when receiving the transfer. Such interpretation is totally unworkable.

- Asking the complete information
The mentioned 7 working days should be a recommendation rather than an obligation.

- Assessing the suspicious character
Incomplete information and delays in rectifying it are rarely likely to raise suspicion of ML/TF. In addition, PSPs generally apply their automated transaction monitoring resource for AML/CTF purposes to the entire customer's account activity. We believe that the inclusion of forms of suspicion assessment, in particular within the post event sampling process for monitoring inward payment traffic is not likely to be efficient, particularly in view of the large PSPs processing high volumes.

Should it bring a case for concern to light, we believe that it will be the exception rather than the rule. We would therefore recommend that the Common Understanding does not try to impose an obligation to assess suspicious character over and above what already exists generally for AML rules under the requirements of the 3rd AML Directive and other legal obligations.

Threshold

It is essential that a list of the countries which apply the threshold of €/€ 1.000 to outgoing payments is published by competent authorities with an indication of the relevant legal basis transposing FATF SRVII.

Review of the Common Understanding

To avoid any misunderstanding, the EBF believes that the review of the common understanding should be conducted at the same time as the review of the Regulation.

Answers to the consultation's questions

Procedures for the PSP in relation to following up requests for complete information (Questions 1& 2)

It is believed that Option A would go further than the existing Regulation by creating further obligations. The EBF therefore strongly favours Option B as the only one letting the necessary margin for maneuver to banks and allow for a proper application of a risk-based approach.

Identifying regularly failing PSPs (Question 3)

The earliness of the application of the Regulation does not allow us to do more than say that we generally agree with criteria (a), (d) and (e).

In application of the risk based approach, PSPs should however be allowed to develop these further.

Coordination mechanism for monitoring regularly failing PSPs (Question 4)

We generally agree that a mechanism is required for the coordination of actions against failing PSPs to ensure that any sanctions are proportionate.

However, whilst the industry should be represented in the coordination process in whatever form, it should not be responsible for what may be considered a decision in the competitive arena. Finally, we consider that any "blacklisting" of PSPs reported as being failing should be the decision of supervisors and therefore not of banks.

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