

Comments

on the Financial Action Task Force's second
public consultation on payment transparency
(proposed revisions to Recommendation 16)

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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Comments on proposed revisions to FATF Recommendation 16

1. Introduction

We welcome the opportunity to contribute to the revision of the FATF Recommendation 16.

Section 2 reflects our **major findings** regarding proposed changes in the following scope areas according to the structure of the Explanatory Memorandum:

- Cross-border Cash Withdrawals
- Application of R.16 to instant payments
- Information requirements for Cross-border payments or value transfers
- Virtual account numbers
- Confirmation of Payee / Verification of alignment of information
- Refinement of Glossary definitions

Section 3 addresses the consultation questions on **lead and implementation timelines**.

As a general remark, we would like to briefly address the proposed extension to the **policy objectives** under paragraph 1 R.16:

- We agree that efforts to combat AML/CFT and to prevent fraud in more general can be complementary as demonstrated by various developments at national or regional levels.
- However, specific instruments are not always suitable to address both objectives at a global scale. Differences in payments preferences or legal frameworks, e.g. data protection laws, could lead to highly complex outcomes (see our comments regarding "confirmation of the payee").
- Fraud prevention policies should not view the payments chain in isolation but rather encourage a cross-sectoral perspective to be effective (e.g. inclusion of telecommunication providers).

We encourage the FATF to keep these interdependencies and constraints in mind, not least to **avoid contradicting other policy goals** such as the efficiency and speed of global payments.

2. Remarks on specific proposed revisions

Cross-border Cash Withdrawals

Referring to our reply to the 2024 consultation, we want to reiterate our concerns regarding provisions that change the processing of ATM cash withdrawals by including additional data requirements: While it is doubtful how these would enhance the effectiveness of AML and CFT efforts, follow-up processes and in particular process failures (e.g. false-positive hits) would lead to delays or rejections with severe consequences for affected consumers.

We welcome that the FATF is aiming for a more balanced outcome with the proposals set out in the current consultation.

However, the provision regarding the cardholder's name in **paragraph 19 lit. (b) INR.16** could still lead to the above challenges from operational and customer impact points of view. If the FATF were to hold on to the approach of an automatic submission of the cardholder's name

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at a minimum, a provision is needed which facilitates a harmonised implementation across all jurisdictions and card schemes.

The current “agnostic” wording of lit. (b) could lead to a fragmented outcome and unnecessary complex and contradictory processes for ATM operators and card issuing financial institutions. It is not feasible to solve this question in the course of the current consultation. The FATF should invite a dedicated stakeholder dialogue encompassing card schemes, the banking industry and organisation bodies (e.g. EMVCo). As a result, a joint approach can be achieved on

- a) how a harmonised implementation should look like, and
- b) how this can be facilitated by an adequate and unambiguous provision in the Recommendation 16.

As regards a possible request for further information on the card holder pursuant to **paragraph 19 lit. (c) INR.16**, the proposed time limit for the replying (i.e. card issuing) financial institutions is too strict. Besides the high implementation costs required to facilitate the automated reply, they would prevent the application of necessary validation checks, such as regarding the legitimacy of the information request. It should be changed as follows:

*(c)[...] reliably and without **undue** delay, ~~e.g. through an automated system~~ [...]*

Application of R.16 to instant payments

We disagree with the FATF’s proposed rejection of extending the “goods and services”-exemption to payment solutions that are not based on a card-based infrastructure. Payment solutions facilitating the purchase of goods and services and making use instant payments infrastructure rails will gain traction in the coming years. The “same risk, same rules”-principle should apply: such payment solutions should enjoy the same exemptions as long as their scheme rules, being both binding for the participating financial institutions and merchants as well as transparent for competent authorities, ensure an equivalent outcome.

The revision of Recommendation 16 should be seen as an opportunity to facilitate this development consistently across jurisdictions and in a technology-agnostic way. The established wording of the EU Transfer of Funds Regulation could serve as orientation:

This Regulation shall not apply to transfers [...] carried out using a payment card, an electronic money instrument, a mobile phone or any other digital or IT prepaid or postpaid device with similar characteristics, provided that the following conditions are met:

- (a) that card, instrument or device is used exclusively to pay for goods or services; and*
[...]

(extract from Art. 3 of Regulation (EU) 2023/1113)

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Information requirements for Cross-border payments or value transfers

We welcome that the new proposal for **paragraph 8 INR.16** strikes a more adequate balance compared to the 2024 consultation as regards the extent of information submitted for the purpose of combatting AML/CTF and data protection considerations. However, we still see two aspects with considerable requirement for adjustments:

- Under **lit. (e)**, the alternative "(i) business identifier code (BIC)" should be deleted. The EU Transfer of Funds Regulation (Regulation (EU) 2023/1113) already accounts for the motivation of this provision. It correctly limits the information requirement to the LEI (alternative ii) in the draft Recommendation 16) and the unique official identifier (alternative iii). While it is correct that some legal entities other than financial institutions possess so-called "corporate BICs", these do not adhere to the same regulatory standards as the LEI or comparable official identifiers.
- Under **lit. (c) and lit. (e)**, the inclusion of the beneficiary's address and their LEI or unique official identifier, where applicable, will result in severe disruptions in the case of SEPA payments: A country outside the European Economic Area, such as the United Kingdom, can become part of the Single Euro Payments Area (SEPA), if it satisfies certain regulatory requirements measured against the respective EU regulatory standards. In such cases, the originator's address is already being submitted based on the data available to the originator's financial institution pursuant to the current FATF Recommendation 16 rules. However, the suggested provision of the additional beneficiary's information, to be affected by the originator, would cause significant disruptions for customers. We would welcome a clarification that allows for an exemption of this provision for dedicated regional payment schemes.

While the proposed submission of the originator's date of birth according to **paragraph 8 lit. (d) INR.16** could support the policy objectives in certain cases, it needs to be balanced against data protection considerations: The date of birth constitutes a highly sensitive personally identifiable information which can be used for fraudulent actions if forwarded to third parties (e.g. social engineering). If the FATF were to hold on to its proposal and thereby open up the above field of tensions, it should at least consider to mitigate the resulting risk: This could, for example, consist in a clear provision for the beneficiary financial institution to not pass on the information to the beneficiary.

Virtual account numbers

We understand the intention to promote an adequate degree of transparency. Given the idiosyncrasies of different national laws, the suggested principle-based approach seems adequate. By contrast, highly specific or overly detailed provisions at the level of the Recommendation 16 would run the risk of questioning legitimate use cases (e.g. cash management solutions offered by a financial institution serving a payment area with different country codes such as the EU). Against this background, we support the suggested approach

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since it does not contradict the IBAN definition pursuant to the ISO 13616 standard and the resulting broadly applied business practice. However, in order to avoid any misinterpretation or inconsistencies, the FATF could sharpen the wording of the relevant paragraph 20 INR.16 and align it more closely with the wording of the above ISO standard.

Confirmation of Payee / Verification of alignment of information

We doubt that the provisions for the ordering financial (debtor) institution to make use of confirmation/verification of the payee-mechanisms to address fraud issues are actually feasible:

- The vast majority of fraud-related transactions are conducted domestically or within regional payment areas (e.g. SEPA). Local market practices or legislation deal with the underlying issue in different ways and are oriented towards the respective legal, technological and behavioural preferences, respectively.
- As an example, the EU has enacted a legal basis to offer “Verification of the payee”-services enabling the originator – and not the ordering financial institution – to better detect fraudulent attempts before authorising a payment.
- Given the significant international differences in terms of data protection, fraud prevention, and liability, a uniform application of this mechanism would be not adequate. **Paragraph 23 INR.16** should be deleted accordingly.

As regards the provisions for beneficiary (creditor) financial institutions:

- Following from the above, the reference to confirmation/verification of the payee-mechanisms in the **paragraphs 32 and 33 INR.16** should be deleted as well.
- The provision to check whether the name and account number of the beneficiary in the payment message aligns with the information held by the financial institution should be reconsidered: It is inevitable that the originator will not always write the beneficiary’s name entirely correct (different spellings, complex names of legal entities etc.). The resulting false-positive hits would require an intense manual validation which may slow down the crediting to the beneficiary and thus contradicts G20 goals. The provision in paragraph 32 should mitigate this issue by leaving room for a risk-based approach.
- Following from the above, we suggest changing **paragraph 32 INR.16** as follows:

32. For cross-border payments or value transfers above the de minimis threshold, ~~if the beneficiary information has not already been checked by a pre-validation mechanism~~⁵⁶, the beneficiary financial institution should apply on a risk-based basis mechanisms to check that the name and account number of the beneficiary in the payment message aligns with the information held by the beneficiary financial institution.

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Refinement of Glossary definitions

The category "Payment(s) or value transfers" should be defined more precisely to avoid possible misinterpretations arising from the broad term "value". We assume that the term "value transfer" will continue to be understood as transactions in connection with e.g. remittance payments and is not to be applied in the context of other financial transactions. We suggest the following amendment:

Payments(s) or value transfer:

*refers to any transaction carried out on behalf of an originator through an ordering financial institution **or Money or Value Transfer Service (MVTs)** by electronic means with a view to making an amount of funds available to a beneficiary at a beneficiary financial institution, irrespective of whether the originator and the beneficiary are the same.*

In addition, we suggest aligning the "Cover Payment" definition with the definition used by SWIFT in order to facilitate a uniform understanding ("A cover payment is sent by or on behalf of the ordering institution directly, or through correspondent(s), to the financial institution (account servicer) of the beneficiary institution. It must only be used to order the movement of funds related to an underlying customer credit transfer.").

3. Questions on lead and implementation timelines

Do stakeholders have any views on the timelines for implementation of the proposed revisions to R.16/INR.16?

In consideration of the possible changes and the necessary technical adjustments and communication measures for customers, the envisaged time horizon of 2030 seems appropriate. However, we want to emphasize that this would require a stringent and coordinated transposition on behalf of national legislators enabling an implementation period of at least **36 months after transposition into the respective national law**.

What should be the lead time for implementation of the proposed new requirements and why?

Any changes to the current processing of card payments and cross-border cash withdrawals require a harmonized implementation approach of the international card schemes (ICS) and domestic or regional card schemes. This could be based on a common standard to be developed by EMVCo or another suitable standardisation organisation. This staggered approach needs to be respected when determining an adequate implementation timeline and should be reflected upfront by the FATF together with the relevant industry stakeholders (please see comments in the subsection "Cross-border Cash Withdrawals").