Electronic Money Association
Crescent House
5 The Crescent
Surbiton, Surrey
KT6 4BN
United Kingdom
Telephone: +44 (0) 20 8399 2066
www.e-ma.org

FATF.Publicconsultation@fatf-gafi.org

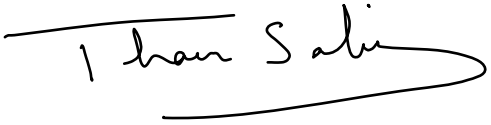
3 May 2024

Dear Madam/Sir,

Re: Comments of the EMA on the proposed revisions to R.16/INR.16

The EMA is a UK and EU-based trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, virtual assets and mobile payment instruments. A list of current EMA members can be seen on our website: https://e-ma.org/our-members.

I would be grateful for your consideration of our comments and proposals.



Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA comments

b. Retaining the existing exemption for purchase of goods and services, subject to additional transparency requirements (paragraph 4 (a) of INR.16)

Q.1 - Do you support FATF's proposal above? If so, which option will be better and why? If you do not support FATF's proposal, please explain why. Are there any appropriate alternative proposals to ensure transparency, adequate AML/CFT controls and level playing field while minimising the unintended consequences?

We support the retention of the exemption, which limits the costs associated with purchase transactions undertaken with e-money instruments and therefore has strong commercial support amongst our members. While we recognise that there may be residual risk in some purchase transactions, this should be addressed through robust customer due diligence and transaction monitoring processes rather than attaching information to a transaction. Transactions received by merchant acquirers from different users do not offer a basis for assessing risk or suspicion as they do not know the customers, and conversely, sending personally sensitive information to every acquirer representing every merchant is entirely disproportionate to any contemplated value that can be gained.

Our preference is for option 1, although we are opposed to the limitation of the exemption to transactions with merchants and the proposed definition of 'merchant'. The gig economy has created positive opportunities for consumers to engage in the limited sale of goods and services, both through the emergence of online marketplaces and developments in the availability of mobile terminals for the acceptance of cards. Limiting the exception only to merchants would create differences in the treatment of transactions for the purposes of R.16 that are functionally equivalent and would thereby counteract the advancements of the gig economy by creating barriers for this business model as compared to more traditional sale/purchase arrangements. We therefore suggest that the exemption remains applicable to all purchase transactions of goods and services rather than be applicable only to those undertaken with merchants.

Q.2 - Are there any important aspects that the FATF needs to consider in finalising the revisions to R.16 and working on FATF Guidance on payment transparency in order to facilitate consistent implementation of FATF Standards between jurisdictions, based on considerations such as feasibility of the proposals, timeline of implementation and mitigation of unintended consequences such as disproportionate impact on cost, financial inclusion, and humanitarian considerations?

The scope of R.16 has been broadening steadily, from addressing CTF risk and relating to originator information in SR7, to the inclusion of beneficiary information and AML more generally, and now to the proposed restriction of exemptions associated with goods and services. There is a need for greater disclosure of the issues that are being addressed in order to be able to assess the cost-benefit of change, there is also a need for feedback on the impact of previous changes and whether they have produced the benefits that were anticipated. Some of the changes proposed will have a significant impact on costs for

businesses, on privacy and data protection for users as and increase the fraud risk profile for users well beyond what could be mitigated by issuers and acquirers.

Similarly, alternative, risk-based solutions have not been set out or discussed, and we do not believe that this is the best approach to addressing specific typologies that may arise from time to time.

Q.3 - Which data fields in the payment message could be used to enable financial institutions to transmit the information on 'the name and location of the issuing and acquiring financial institutions' in a payment chain? If appropriate data fields or messaging systems are not currently available, how could they be developed and in what timeframe?

We are unable to ascertain what purpose this information would serve, given that it is already available through the payment schemes. Care should be taken not to require changes to messaging systems that place a burden on industry that is disproportionate to the value added to law enforcement processes.

Q.4 - Do you support the FATF's proposal to apply the amended card exemption equally to credit, debit, and prepaid cards? If not, why? Are there any appropriate alternative proposals? In terms of the potential differences in AML/CFT risk profiles and mitigation measures in different types of cards such as credit, debit, and prepaid cards, are there any aspects that FATF should pay due attention in finalising revisions to R.16 and in developing the future FATF Guidance on R.16? If so, what are they?

The exemption has been successfully applied by the issuers of prepaid instruments for a number of years and should continue to be available to them in order to offer users effective means of payment at lower values. Removing or restricting the exemption would significantly impact pre-paid business models by raising associated transaction costs.

Q.5 - Considering that the current exemption extends to credit, debit and pre-paid cards, are there any other similar means of payment that should be included in the card exemption for the purchase of goods and services? What are examples of those means of payment, and why should they be included in the exemption?

(i) Some non-card payment products similar in functionality also warrant exemption from R. 16. In this respect, the wording adopted in the EU, namely "a payment card, an electronic money instrument or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics" (Wire Transfer Regulation 2015, Art. 2(3)) has worked well in practice over a number of years.

(ii) Equally, some virtual assets, particularly stablecoins classed in the EU as electronic money tokens ('EMTs'), should be included in the exemption (as recognised by the forthcoming EU application of R. 16 to virtual assets), as EMTs are designed primarily for purchase transactions and replicate the functionality of cards in many respects.

Q.6 - Should R.16 apply to cash withdrawals and purchase of cash or a cash equivalent? If so, should it apply to withdrawals using credit, debit, and pre-paid cards in the same way, or be differentiated according to card type? Should it apply only to withdrawals above a threshold and if so, what is the appropriate threshold?

Cash withdrawals should not be in scope of R. 16, as these are not designed to be payment or value transfers to third parties and usually involve card holders withdrawing cash from their own account. For e-money cards, for example, cash withdrawals are the preferred means of enabling consumer redemption of small balances remaining on cards after purchases have been completed. While the suggested domestic USD/EUR 1,000 threshold would be helpful in this respect, we think that cash withdrawals should be excluded from the exemption in principle, as the sending of customer information required under R. 16 is entirely unworkable. Furthermore, many ATM operators are not regulated PSPs. The risk assessment associated with such withdrawals can be made by the card issuing PSP that holds information on the customer and is able to assess the risk, departures from the norm and compare such data to other usage data available at the time. There is little if any value in sending originator and beneficiary information to an ATM operator, and there is potentially significantly increased fraud risk and technical as well as regulatory overhead. This is not in our view an effective use of resources, nor has it been shown to be a risk-based approach to any typology that has been described.

On purchases of cash and cash equivalents, see our response to Q.7 below.

Q.6bis - Do you support the FATF's proposed treatment of domestic cash withdrawal? Are there situations in which exemptions should apply (other than domestic withdrawals by a beneficiary from ATMs of financial institution holding its account, in which case R.16 has no applicability)? Are there any important aspects that FATF needs to consider in terms of implementation of applying R.16 to withdrawal or purchase of cash or a cash equivalent?

Please see our answer to Q.6 above.

Q.7 - What should be included in the scope of 'cash equivalent'? What aspects regarding the scope of 'cash equivalent' should be further clarified? Should such scope be defined in the standards or clarified in the future FATF Guidance?

The undefined term 'cash equivalent' leaves open the possibility for jurisdictions to apply this term to a wide variety of assets, including e-money, other prepaid instruments, virtual assets and other assets with an easily-realisable value. This is concerning, not least because purchases of regulated financial products subject to CDD obligations, such as e-money or virtual assets, should not be excluded from the exemption. These products are not 'cash equivalent' and should not be in scope of this definition. E-money and virtual asset services involve full CDD and monitoring obligations in relation to the customer, and in contrast to cash, R.16 already applies to transfers of e-money and virtual assets. It is therefore unclear what value would be added by the attaching of information about the e-money institution or

virtual asset service provider's own customer when they make a purchase transaction of e-money or virtual assets with their card. This is consistent with the reasoning under Q.11 below that R.16 obligations should commence with the customer order rather than the funding of the transfer.

c. Improving the content and quality of basic originator and beneficiary information in payment messages (paragraph 7 of INR.16)

Q.8 - Would stakeholders support FATF's approach and view that the proposed amendments will improve the reliable identification of the originator and beneficiary and increase efficiency? Which of the two options set out above for the proposed revisions in paragraph 7 would stakeholders prefer and why? To what degree is the customer identification number, as set out in paragraph 7 (d), useful to identify the customer? Are there any other issues or concerns in this regard? Are there any important aspects where the FATF needs to provide more granular advice in the future FATF Guidance in order to facilitate effective and harmonised implementation of the FATF proposal?

In the absence of evidence, it is difficult to assess the relative merits; on the whole, the lower requirement of Option1 are supported over Option 2, but in both cases we would encourage the FATF to provide more information to assist in the decision making associated with any increase in the scope of transfer of information along with a payment message.

The FATF should also consider payment infrastructure limitations that in certain cases prevent receiving financial institutions to capture some of the information included in payment messages, for example where an international transfer is classified as 'domestic' because local payment networks are used. The lack of harmonisation in postal addresses globally should also be addressed.

d. Addressing transparency in case of virtual IBANs and other similar account naming conventions (paragraph 7(b), footnote 1 of INR.16)

Q.9 - Do stakeholders have any views on the suggested approach to ensure more transparency about the location of originator and beneficiary accounts? Are there any issues or concerns?

Footnote 1 would effectively prevent the use of virtual IBANs ('vIBANs') as account identifiers or reconciliation tools which would have a serious impact on a number of regulated payment service providers.

vIBANs are an important enabler to delivering a range of services that are offered by non-bank payment service providers to customers – including the provision of regulated electronic money accounts, payment reconciliation and payment identification. In the EU, they are also an important tool in combatting IBAN discrimination. A core benefit of a vIBAN is that it can allow firms to automatically reconcile payments to various payers and payees simply through allocating a vIBAN, thereby increasing transparency throughout the payment chain.

Firms have deployed a range of risk controls to monitor and address the usual risks with offering payment or electronic money accounts. In relation to the allocation, distribution or use of vIBANs, firms are not recording higher levels of fraud in these services. In fact, as vIBANs are generally allocated to a single payment service user, these models can have a higher level of transparency than traditional electronic money firms (where payments might only ever be made to a single, pooled safeguarding account, without any degree of transparency). Furthermore, a number of firms set specific limits, such as only permitting 'first party / closed loop' payments (i.e., the user who has been allocated a vIBAN can only make payments to and from their own accounts and specifically cannot make payments to unidentified third parties).

In case suspicious activity reports are ever raised about the users of a vIBAN, the ultimate user of a vIBAN is discoverable by law enforcement by contacting the entity responsible for allocating the IBAN. Firms have policies and processes in place to swiftly respond to these requests in a similar manner to how traditional electronic money firms across the industry cooperate with law enforcement when payments are made by users directly into their regulated safeguarding accounts.

e. Obligations on beneficiary financial institutions to check alignment of beneficiary information in payment messages (paragraph 20 and 21 of INR.16)

Q.10 - Do stakeholders support the FATF's proposal? If not, why? Will the proposed obligations help financial institutions in better addressing their financial crimes risks? Does the term "aligns with," together with the risk-based provisions in paragraph 21, create a clear and sufficiently flexible standard? What are potential unintended consequences of this proposal if any? In terms of how financial institutions can meet these requirements more effectively and efficiently, what kind of guidance and information should the future FATF Guidance include? If financial institutions have already implemented these checks, what are the current best practices of implementing the proposed requirements that could be introduced in the future FATF Guidance?

The deterrence and prevention of fraud is supported; the additional obligation would however seek to introduce anti-fraud measures through the R.16, an ostensibly AML and CTF related provision. It would introduce additional obligations that will require compliance within the framework of AML/CTF but will in fact seek to address fraud. Greater discussion and assessment of the implications would be welcome.

If the proposal is adopted, reasonable discrepancies should be allowed when determining the alignment of beneficiary information in payment messages. Guidance will be required on the point at which discrepancies should be considered a 'no match' and what steps financial institutions should take in this case.

f. Definition of payment chain (paragraph 23)

Q.11 - Do you agree with the issue that FATF has identified with respect to the start of a payment chain and support FATF's approach to address the issue? The proposed revision (paragraph 23 of INR.16) has two options on whether the payment chain should begin with

the instruction by the customer (Option 1), or with the funding (Option 2). Which of the two options would stakeholders prefer for the start of the payment chain and why, also considering the response to question 12 for consultation set out below? What are the aspects where more granular guidance in the future FATF Guidance could be helpful?

(i) We strongly recommend the adoption of Option 1. For the purposes of R. 16, the transfer itself, as indicated by the changes in the originator and beneficiary's balances, should be distinguished from the route by which the value moves in order to effect this transfer. Only the former carries the requisite intention that makes the transfer meaningful in terms of ML/TF, while the value movement itself may be fragmented, counter-directional and characterised by other than the intention to effect a transfer to the beneficiary. For instance, there is a disconnect in general law between the funding of a balance and subsequent transfers out of a balance (reflected in, for example, tracing rules for funds misappropriated from various sources), whereby the law imputes intention to each transaction according to defined rules. Any association of funding and subsequent transfers under R. 16 would run counter these rules. Another reflection of this disconnect is that the contractual obligations applying to the funding transaction do not cover any subsequent transfers made from the balance.

Furthermore, many e-money and payment services transfers are pre-funded in a way that would make the attachment of information to the funding transaction in practice impossible, as it may not be known at that point what transfers, if any, will be made with the prefunded balance, and when. Funding can also originate from multiple sources, making such a requirement similarly impossible to implement.

(ii) R. 16 should be focused on the intentional transfer between two parties. Banking services that fund, move and settle this transfer should be seen as subordinate to the transfer rather than vice-versa (although these may themselves constitute separate transfers for the purposes of R. 16). To regard only banks as able to obtain and attach the required information relating to a transfer would not be reflective of the regulated status of MVTS firms contracted by the customer for making the transfer.

Q.12 - Do you support the idea of adding footnote 2 of para 7(b) if FATF adopts option 1 above in Q.11? Can the ordering financial institution obtain this information, populate the payment message, and execute the payment? How can this additional information be included in payment messages, e.g., the ISO20022 message? If appropriate data field or messaging system is not currently available, how could this be developed and in what timeframe? Is this footnote clear enough, especially in terms of when and in which cases this requirement applies? Are there any important aspects where the FATF needs to provide more granular expectation in the future FATF Guidance paper?

We hold the view that the transfer begins with the ordering financial institution rather than the funding financial institution (see our response to Q.11 above).

g. Conditions for net settlement (paragraph 24)

Q.13 - With the clarity on the payment chain (paragraph 23) and paragraph 24, do stakeholders observe any remaining risks associated with net settlement that should be addressed in the R.16/INR.16 amendments? Are there any aspects where FATF should provide more granular expectation in the future FATF Guidance?

We regard settlement as outside the scope of the transfer of information under R.16; provided of course that information is transferred in or with the payment messaging protocol. There is no need to send such information twice.

h. Financial inclusion, de-risking and other policy consideration such as cost and speed

Q.14 - Do stakeholders have any views on the proposed revisions to R.16/INR.16 from a financial inclusion perspective, including potential impact on account-opening policy and procedures of financial institutions, and humanitarian considerations? Which, if any, specific proposals raise particular concerns? Are there any alternative approaches or mitigating measures in case of such concerns?

R16 operates in addition to R10 on CDD and therefore any additional CDD obligations will have an impact on banking and payment services. There should be a balance between objectives for R.16 and product attributes and the consumer experience. It is important to maintain a risk based approach and to seek to address the risk of financial crime in a manner that least impacts the customer experience.

i. Impact on other FATF Recommendations

Q.15 - When and how the R.16 revision applies to the virtual assets (VA) sector will be considered separately by FATF. If you are aware of any technical difficulties or feasibility challenges in applying this proposed revision to the VA sector, please specify. FATF will welcome proposals on how to address those difficulties and challenges, if any.

Please see our response to Q.5 in relation to the application of the card exemption to the virtual asset sector. In general, we believe that the points made in our submission are equally applicable to firms offering regulated virtual asset products and services.

Q.16 - Do you agree with the proposed changes to the Glossary definitions?

Please see our response to Q.1 in relation to the definition of 'merchant.'

j. Timing of implementation of R.16/INR.16 revisions

Q.17 - Do stakeholders have any views on the timelines for implementation of the proposed revisions to R.16/INR.16? What should be the lead time for implementation of the proposed new requirements and why?

No response provided.

Q.18 - Are there any issues that should be addressed in the proposed amendments, or wider issues concerning payment transparency, which will require clarification through FATF Guidance?

No response provided.