the payments association

March 6th, 2023

Dear Mr Lyddon,

Thank you for your letter dated 2nd February 2023.

The Payments Association has a diverse membership: credit institutions, fintechs, vendors and suppliers to the payments industry. Project Financial Crime, which consists of volunteers from amongst the membership, aims to provide relevant information to members in order to encourage regulated members to prevent financial crime, promote the services of suppliers where these services can prevent financial crime, and to lobby, where appropriate, for changes in law and guidance.

Our members are responsible for their anti-financial crime policies, procedures and processes and for taking action according to their interpretation of relevant legislation and their risk appetite. We do not have a regulator function and, while we issue guidance and best practice information to influence members and promote compliance, we have no jurisdiction to enforce legislation or to require changes to current industry standards and practices.

We do not know the extent to which the matters cited in your letter are “common practices”. We believe that bodies such as the FCA, PRA or Pay.UK and SWIFT would be more appropriate recipients of your suggestions/comments as they have the authority and means to review them and, if appropriate, to take action.

We thank you for your interest in the Payments Association.

Yours sincerely

Jane Jee

Lead for Project Financial Crime
The Payments Association

Bob Lyddon response sent by email

To Jane Jee

Copy to Tom Brewin (Head of Projects at The Payments Association)

QUOTE

Thank you for your letter. Its content does not hold water when it is compared to the Mission Statement of Project Financial Crime on the website of The Payments Association:

'To deliver community-driven solutions that address the problems posed by digital and financial criminal activity and position The Payments Association and its members as leaders in tackling financial crime'.

I have laid out in my open letter three areas that enable 'problems posed by digital and financial criminal activity'. It is not credible that you appear to be unaware of their existence and take the line that someone else should look at them, if they even exist.

Why don't you ask one of your project's members, a credit institution, the one that proposes the following to other FIs: 'Accounts & Virtual Solutions - Provide your customers with physical and virtual accounts in multiple jurisdictions – without the need for a local presence'?

You could ask them the following questions:

1. whether they have issued Virtual International BANK Account Numbers for usage by FIs who are NON-BANK Fintechs;
2. whether they have a CDD file themselves on the customers of these non-bank Fintechs who are using the IBANs;
3. whether all the non-bank Fintechs are domiciled within the SEPA Area;
4. whether any incoming SEPA credit transfers do not include the name of the payee, but just the IBAN.

The AML/CFT problems I have in mind are:

1. IBANs should not be used in relation to eMoney accounts or to 'payment accounts' at Payment Institutions. Such accounts can be eligible for only Simplified Due Diligence due to the account's limited features, a safeguard that is circumvented if an IBAN is issued. Issuance of an IBAN requires a bank account, which requires normal CDD, or Enhanced DD as the case demands;
2. If there is no CDD file and yet the credit institution is identifiable as the ASI through the IBAN, the credit institution has breached AMLD;
3. The IBAN enables the Fintech to be reachable under the SEPA Schemes without being visible. That is 'nesting'. The Fintech could be domiciled anywhere in the world, with whatever level of AML/CFT competence and supervision, and the 'customer' could be anyone;
4. Allowing a payment without the name of the payee to reach an account outside the SEPA Area is a breach of Funds Transfer Regulation (EU) 847 of 2015.

Once you have obtained the answers to these questions from your credit institution, why don't you come back with an explanation either of (i) why what the credit institution is doing poses no risks of enabling digital and financial criminal activity; or of (ii) what the risks are and what The Payments Association and its members are going to do as a community to eliminate them not just at the one credit institution but across the non-bank Fintech sector as a whole.

UNQUOTE