

## **AFEP response to CP18/21**

**October 2018**

The Association of Foreign Exchange and Payment Companies (AFEP) is a non-profit association for authorised payment and e-Money institutions which operate in the European Economic Area. It was founded in 2012 to act as a representative body for payment companies. With 57 member firms spread between API and EMI establishments, the association has a strong footing within the industry. Our members are growing at a fast pace, with the FX turnover amongst members around £120 billion, which equates to the members of the association grossing a combined revenue number in the region of £600 million. AFEP has developed into a well-respected association acting as a voice of the industry and liaises with government departments and regulatory bodies on important legislative matters. The aim of the association is to promote the highest standards of practice for compliance; advocate on behalf of our members with regulators and government bodies and encourage our members to share and exchange information for the benefit of members.

We welcome a regulatory framework that sets the standards with which firms are expected to comply and, in particular, provides appropriate customer protections as well as clarity and consistency for the industry. We believe that, applied proportionately, such standards can help develop the reputation of our industry and increase consumer confidence. However, we also have concerns about the risk the introduction of requirements outside of PSD 2 could have on the ability of firms to compete internationally. This would seem to hinge on how the FCA expects firms to demonstrate compliance with the principles and as such we would welcome additional guidance.

*Q1: Do you agree that there is no need for an implementation period for any rules we introduce, following publication of our Policy Statement?*

We agree that the Principles of Business and Communication (including marketing communications) rules promote good business practice and would expect our members to comply with these in principle. However, there are areas where we expect our members to want to revisit current practices and processes in order to be able to demonstrate how they comply with the principles. We therefore have concerns with the lack of implementation period.

Taking Principle 6, Customer's Interests, we anticipate the FCA would expect our members to demonstrate an understanding of Treating Customers Fairly and have in place adequate controls, for example reviewing MI policies, and procedures as well as terms and conditions.

Treating Customers Fairly took a considerable amount of time for banks, insurance companies and investment firms to implement. We believe the FCA should take this into account and provide a reasonable implementation period for the industry to assess and plan for these changes.

Equally, lack of implementation period for Principle 7, communication with clients, is a cause of concern for our members who may wish to review all websites and marketing materials as well as those of any introducing brokers. This is a resource intensive and time-consuming process and could not happen immediately.

If the FCA expects firms to review their current processes and policies and align these with the new rules, we urge that time is given for these changes to occur. This could take some time, particularly if IT system changes are required. Indeed, para 3.62 of the CP acknowledges the costs likely to be incurred in making the necessary changes; specifically, around "familiarisation with the regime and ensuring/demonstrating compliance".

We would also like to bring to the FCA's attention that many of our member firms are also trying to establish a presence in Europe at this time due to the current Brexit negotiations and the implementation of the Principles does fall at a crucial time and as such firms may need an extra 12 months.

Such familiarisation and preparation would not be possible without a reasonable implementation period and AFEP would propose an implementation period of 12 months.

*Q2: Do you have any comments with regards to the equality and diversity implications of our consultation, in particular to certain groups and/or communities?*

We agree that there is no negative impact on equality and diversity and that there is unlikely to be a positive impact beyond that seen by customers in general. Our members rely on banking counterparties to serve their customers and their ability to serve low value transactions to jurisdictions viewed as "high risk" is often determined by the appetite of such counterparties.

*Q3: Do you agree with our proposal to apply the FCA Principles for Businesses to the activity of provision of payment services and issuance of e-money (where not already a regulated activity) and connected activities?*

While we all agree with the good practice that the Principle of Business promote, it will be difficult for those members who have not had them apply before, to understand the FCA's expectation without supporting guidance. We note that other sections of the FCA's Handbook help firms to clarify what is meant by the Principles. There are only limited aspects of the Handbook that would apply to payment services and e-money services, so we believe that if the Principles are to apply to these services, further guidance is essential. AFEP would suggest that PRIN3 might be the most appropriate part of the Handbook to contain such guidance, or perhaps a new Schedule to PRIN addressing non-bank PSPSs.

In addition, we feel there is confusion about the intended scope of the Principles due to the FCA's proposal to include "connected activities". This is of particular concern to our members as there are a number of different business operating models, including 'hybrid' firms who have activities that include foreign exchange services that are not currently regulated by the Payment Services or E-Money Regulations ("unregulated foreign exchange").

We assume that the FCA's proposed definition of "connected activities" would not include unregulated foreign exchange services as this would be outside the scope of the FCA's powers. We would therefore appreciate clarification from the FCA about the intended definition of "connected activities". If the aim is to promote consistency and create a level playing field amongst FMSA and non-FSMA regulated firms, clarity on scope is essential.

Clarity and guidance on scope is also essential as it is common for the FCA to cite breaches of the Principles alone as a sufficient basis for enforcement action. We would propose guidance addresses areas such as scope and what ongoing steps should EMIs and PIs take to evidence that the Principles are being applied. This would ensure that Payment Institutions ("PIs") and Electronic Money Institutions ("EMIs") have a clear understanding of the FCA's expectations.

The FCA is also proposing that the definition of 'customer' these changes would apply to includes 'consumer, micro-enterprise or a charity which has an annual income of less than £1 million'. We understand that the FCA's intention is to provide appropriate customer protection and has aligned this definition with the Payment Services Regulations. Our members are supportive of this approach.

*Q4: Do you agree with our proposal to extend the application of all the Principles as a collective set of standards to PIs, EMIs and RAISPs?*

Whilst we see the logic of equal treatment for providers of the same service to create a 'level playing field' the E-Money and Payment Services regimes were specifically set up as 'lighter touch' regimes.

While we agree that this could increase the consistency with other service providers in the UK market, it could put members at a competitive disadvantage compared to other providers in the EU.

However, if the Principles are interpreted in light of the E-money and Payment Services Regulations, many of the standards imposed could be seen as overlapping with pre-existing requirements, such as requiring the business to be conducted with due skill, care and diligence and with adequate systems and controls.

There are some Principles that do not seem relevant to E-money or Payment Services, such as Principle 9, and we believe it would be inappropriate for this to apply to members. We believe to avoid confusion for members and customers, that the FCA should specify the specific Principles that apply to EMIs and PIs.

*Q5: Do you have any comments on our proposals to apply the communications rules indicated in this CP to credit institutions, PIs, EMIs and RAISPs when providing payment services or issuing e-money?*

Applying the communication rules to PIs and EMIs could have a number of important consequences. We believe the rules generally reflect consumer protections that currently apply, so we question the need to include specific rules in BCOBS. Bodies such as the Advertising Standards Authority already have the power to take action in respect of misleading advertisements.

We also note that "connected activities" are referred to in the proposed rules and, as outlined above to our response to question 3, we would urge the FCA to clarify what services are intended to be in scope.

*Q6: Do you agree with our proposals to introduce new guidance for communications for currency exchange transfer services to credit institutions, PIs, EMIs and RAISPs when providing payment services or issuing e-money involving a currency conversion, to prevent misleading communications?*

As stated previously, our concern is that the FCA appears to be extending regulation to aspects of businesses that are not within the scope of the Payment Services or E-money Regulations. As the FCA's approach document confirms, currency exchange services can be a separate service to payment services provided to a client. We would ask the FCA to confirm that currency conversion services provided separately to a payment service are not intended to be covered by this this guidance.

*Q7: Do you agree with our proposed approach to prevent firms from issuing communications that use exchange rates that are not achievable?*

We agree firms should not use exchange rates that are not achievable. However, we do believe it is important that firms are able to provide information about interbank or market rates to help inform their decision to make a payment involving a currency conversion, track the market and understand the likelihood of being called for margin. This can also assist customers to compare rates offered by different firms. We assume the FCA does not intend to prevent all use of market rates but would be grateful for further guidance from the FCA to ensure a consistent application by firms.

A number of our members who have recently removed their interbank convertors have received complaints from customers who are used to having access to track the market. Some examples of customer feedback include:

*"Please let me know when you and the Nanny State have come to an accommodation on this 'storm in a teacup'"*

*"The rules seem to be framed as if all your clients are stupid...and we are certainly not! Is it not possible to state 'indicative only – for actual current dealing rates please contact our currency staff'"*

*"I use the information with the currency converter as a good way to monitor currency movement before making a decision to move currency from sterling to my overseas account. I am fully aware that the figures quoted were not the exact figure that I would get when transferring. A clear warning is all that is required."*

*Q8: Do you agree with our proposed approach to ensuring that any comparisons of costs are fair and meaningful?*

We agree that any comparison of cost must be fair and meaningful. We believe that customers are already provided with this protection under the Consumer Protection from Unfair Trading Regulations. As referred to above, it does not seem necessary to include specific rules in BCOBS in relation to this. However, to the extent that the FCA intends to do so, we believe the current approach is appropriate.

*Q9: Do you agree with the scope of our proposals to exclude other currency exchange transfer services that are not carried out as part of a payment or e-money service (such as 'bureaux de change' activities)?*

We agree that it is not appropriate for the FCA to include currency exchange transfer services as these are outside the Payment Services and E-money Regulations, and therefore outside the FCA's rule making powers provided by those Regulations.

*Q10: Do you have any comments on our cost benefit analysis?*

We would seek further clarity around how the FCA reached the cost benefit analysis highlighted in its consultation paper. In particular, we are concerned that this may underestimate the cost to members of ensuring that they can demonstrate they meet the Principles and communication rules. Members who do not have an associated investment firm may find the cost higher.

In respect of cost of staff, our members spend resource just in respect of compliance of the principles for our investment entity. For a medium to large firm this may be currently around £100,000 in cost, but if this was to be expanded across the EMI's our members would need to increase headcount by 3 people at least. This places considerable financial pressure on member firms along with a recruitment and resource issue as it is hard to find qualified people who know the implementation around TCF. This will drive up the costs for smaller firms reducing competitive rates for consumers or drive the smaller firms out of business thus reducing competition for customers.