



Financial Data and
Technology Association

Financial Data and Technology Association
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OB VRP Proposition Consultation Paper
Sweeping Evaluation Consultation Paper

RE: OBIE VRP Proposition Consultation: Revised Roadmap item A10

On behalf of the membership of FDATA Europe, please find our response to the questions set forth in the OBIE's VRP Proposition Consultation.

Should you have any questions relating to this response, please do not hesitate to ask.

Warmest regards,

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FDATA Europe Response: OBIE VRP Proposition Consultation

Question 1: To what extent do you agree with the definition of VRP? Please give reasons for your answer.

Response 1:

FDATA in principle agrees with the definition of VRP as set out by the OBIE. We find that the parameters are flexible enough to support the various use cases proposed for the market at the moment, however we also recognise that the utility of VRP goes beyond that of existing use cases for Card and Direct Debit it is intended to replace/compete with, and therefore recommend expanded thinking about future use cases for VRP in light of the current proposed parameters.

We would welcome feedback from those firms participating in the FCA VRP sandbox as part of the wider VRP industry consultation. Their empirical feedback could be informative in shaping the practical definition of VRP.

We also agree with outlined VRP Consent Parameters, and note that they provide appropriate risk mitigants as well as customizable constraints for a given payment activity. We would propose an additional line item in the parameters that allows a PSU to make note of the purpose of the specific VRP, as the PSU may have multiple VRPs set up, and this additional line item assists the PSU to better manage their accounts.

Question 2: To what extent do you agree with the interpretation of the regulatory treatment of VRP? Please give reasons for your answer.

Response 2:

Reasonable consumer protections are built into the VRP Consent Parameters, which also allow VRP consent to be revoked via both the PISP and ASPSP. However, we recommend either FCA/PSR confirmation or a firm legal opinion on the proposed definition of "amount" under VRP Consent Parameters; the assumption that 'amount' should be treated as the cap or range originally agreed to by the PSU in the original VRP Consent set up is just that – an assumption

The interpretation of the regulatory treatment of VRP would indicate that Delegated SCA require bilateral agreement between ASPSP and PISP, and therefore does not meet the definition of 'open'. FDATA supports the use of the SCA Exemption over Delegated SCA for this very reason; rather than push the Delegated SCA model, FDATA and its members would advocate for a regulated non-contractual access model to ensure a level competitive playing field with reduced barriers to entry for PISPs.

Our members have expressed concern about the ability to manage bilateral contracts at scale across not just the CMA9, but with other ASPSPs in the market who take up sweeping and VRPs as part of their PSD2 compliance. Guaranteeing fair and equitable terms for those contracts is in doubt, as is the continuity of operational procedures across different ASPSPs – both of which risk becoming barriers to entry for PISPs. Since bilateral contracts are fundamentally antithetical to the definition of ‘open’, and sweeping (as enabled by VRP) is part of the *Open Banking* CMA mandate, a regulated non-contractual access model really is the only acceptable approach.

We agree that the VRP use cases listed have merit, but they merely reflect an alternative approach to capabilities available via existing payment methods (card and direct debit), albeit in a much more consumer friendly approach. FDATA believes that VRP under SCA exemption has much more potential, and that it will open up many more customer centric use cases if not constrained by an ‘existing alternative’ mentality. The go to market for those innovative use cases ought not be limited to those PSUs whose ASPSP has a bilateral contract for delegated SCA, and access to these additional use cases should not be limited to certain market segments by virtue of optionality and bilateral agreements.

Question 3: To what extent do you agree with the analysis of risks and mitigations, including the consumer protection framework? Please give reasons for your answer.

Response 3:

FDATA agrees with the analysis that the proposed VRP consumer protections, as a PISP regulated activity, are appropriately and duly addressed by the existing regulatory oversight framework.

Any PISP with a license to operate in the UK market already meets stringent FCA requirements, and will have requisite appropriate risk controls in place, as overseen by FCA supervisory and enforcement divisions. This licensing, supervision, and enforcement framework provides robust consumer protections already, guided by the FCA’s Principles for Business which includes fair treatment of the customer, customer trust, and adequate protection of the customer’s interests and assets.

However, FDATA disagrees with the assertion that there is increased customer risk under the SCA exemption model. Under SCA-RTS, recurring direct debits are considered “merchant-initiated” and therefore do not require SCA; VRPs are a competitive substitute for direct debits. Under an SCA exemption model, similar to that afforded direct debit payments, VRP does not pose an increased consumer risk.

Moreover, low-value payments are exempt from SCA. Any VRP amount cap that qualifies as ‘low’ (€30) should automatically qualify for SCA exemption, like its other low value payments counterparts, and therefore have similar – not increased – risk. The same can be said for fixed-amount subscriptions. This exemption applies when a PSU makes a series of recurring payments for the same amount, to the same business. SCA is required for the

PSU's first payment and subsequent charges (under the Trusted Beneficiary exemption) may be exempted. Under VRP, this trusted beneficiary exemption is also applicable, with the amount cap standing in lieu of a fixed-amount; it therefore poses no increased consumer risk. Business-to-business payments using a corporate card (or virtual card number) are also exempt from SCA. SMEs using VRPs to pay other businesses would also come under the SCA exemption model, and there is no evidence to suggest they would incur increased risk by virtue of opting to use VRPs

Credit transfers between accounts held by the same person also fall under SCA exemptions. Two of the most widely touted use cases for VRP falls under this exemption, and are listed in this consultation as use cases 6 and 7 on page 8, Section 5. VRP Use Cases:

6. As a customer looking to earn more interest, I want to use a third-party smart saving app that moves money from my bank accounts to my own saving account on a flexible/variable basis so that I can save money.

7. As a customer looking to avoid unnecessary fees, I want to use a third-party service that monitors my account to maintain a threshold balance in my account or avoid overdraft fees and moves funds as and when required between my accounts.

Increased consumer risk has not been proven for either of these VRP use cases under the SCA exemption model. To assert otherwise is misleading.

We dispute the increased risk of consumer disputed payments under the SCA exemption model (one where the customer is 'not in session'). In any case, there is already a dispute mechanism/process in place for payment, and VRP merely adds a 'burden of proof' shift to the PISP, meaning the ASPSP will have to engage the PISP to get the necessary evidence that PSU consented to the payment. There is no evidence of increased risk of VRP leading to disputed payments – there is only evidence that the resolution mechanism requires an extra step.

Question 4: To what extent do you agree with the requirements for the VRP standard? Please give reasons for your answer.

Response 4:

FDATA strongly supports the requirements for the VRP standards: they meet the regulatory requirements and provide a robust consumer friendly framework. As a principle for a fair competitive landscape, we support the wide scale adoption of API standards. A consistent interface reduces shared costs across all market actors, and allows for measurable conformance and performance metrics.

We wholeheartedly support the standard as outlined. We also recognise that some feedback may contrive to blend the standard with policy, and we caution against that. This consultation focuses on the 'what' of VRP: the standards. It does not attempt to include the 'how', the policy and rules that frame out how VRP is implemented and delivered. Adopting the standards cannot be dependent upon agreement to the rules surrounding the delivery of

VRP. The standards should be considered on their merit, as a stand-alone exercise. In the spirit of that, FDATA supports the standards as outlined.

FDATA Europe Response: OBIE Sweeping Evaluation Proposition Consultation

Question 1: To what extent do you agree with the proposed definition of sweeping? Please give reasons for your answer.

Response 1:

For the most part, FDATA agrees with the proposed definition of sweeping, however we fail to see the logic that limits sweeping to 'the automatic movement of funds between two accounts held at *different institutions*' (emphasis ours). A number of PSUs have accounts beyond just the current payment account with the same provider, i.e., savings, lending, mortgage, overdraft, joint, etc. Limiting sweeping to movement between different institutions or providers also limits the end consumer benefits; the definition should therefore remove this limitation.

FDATA also believes that Sweeping Access should not be limited to bank accounts only. As Open Finance starts taking shape, initial access to other non-bank accounts ought to be considered, including credit cards, Individual Savings Accounts, and Pensions. If the point of including sweeping in the roadmap is to promote better customer outcomes, limiting the types of account to which sweeping could apply also puts strict limits on the utility of those customer outcomes.

As OBIE notes, joint accounts are included in-scope of the mandate. We strongly encourage the OBIE to consider a thoughtful approach to defining consent when sweeping goes from a joint account to a sole account. Having an authorisation from one party of the joint account when the funds are directed to that same PSU's sole account is inadequate protection to the other party on the account. It poses material conduct risk, especially if the owners of the joint account find themselves in conflict (i.e., dissolution of the relationship). We do agree that sweeping from a joint account needs to be included in the list of use cases that must be delivered to market; we suggest expanded protections in the consent journey for this use case.

FDATA also suggests aligning the minimum and maximum payment definitions with that of Faster Payments, considering sweeping and VRP payments may be treated as an Open Banking Single Instant Payments (SIPs) (barring resolution to the question of customer-present access for SCA) and run on the Faster Payments infrastructure.

Question 2: Are there additional benefits or risks associated with sweeping that you would like to highlight?

Response 2:

One of the primary consumer benefits to sweeping is the reduced risk exposure PSUs have with insufficient funds challenges associated with Direct Debits and Card on File. With sweeping, the SSP can apply 'smart' rules that reduce the risk of leaving the PSU exposed – rules facilitated by the SSP's AISP status. Being able to manage when and how funds are swept in context of the account aggregation and finance management capabilities of AISP functionality mitigates the risks of insufficient funds associated with Direct Debit and Card on File payments.

Question 3: To what extent do you agree with the proposed criteria for assessing the suitability of different payment methods? Please give reasons for your answer.

Response 3:

FDATA very much agrees with the proposed criteria for assessing the suitability of different payment methods for sweeping.

Especially important are the unnecessary obstacles to the provision of sweeping payments and the cost burden to SSP, as both pertain to a fair and level competitive market. The inclusion of transparency and control provide a consumer protection lens through which to examine the suitability of payment methods. And the inclusion of the immediacy of transaction criteria helps frame the corresponding possible customer benefit (i.e., timeliness for interest rates) against the risk of consumer detriment (i.e., insufficient funds planning, and missed interest rate change deadlines).

Question 4: To what extent do you agree that neither Direct Debits nor Continuous Payment Authority on cards, nor open banking SIPs are suitable funding mechanisms for sweeping as defined by Order? Please give reasons for your answer

Response 4:

FDATA completely agrees with the conclusion that Direct Debits, Continuous Payment Authority, and open banking SIPs are not suitable funding mechanisms for sweeping as defined by the CMA order.

Neither DD and CPA offer real time payments, nor mitigate onerous costs to an SSP (which includes both ASPSPs and third party providers), thereby undermining the economic feasibility of sweeping services. We recognise that OB SIP is the closest competitor to VRP, in that it provides transparency, immediacy, and low operational costs. However the SIP obstacle of the need to have the customer present for each payment initiation completely upsets the point of having automatic sweeping payments, and renders it a moot solution.

We strongly believe that this leaves VRP as the only viable option to enable sweeping payments, as per the CMA Order. The logical next step to this would be to mandate VRP in order to deliver sweeping payments.

Question 5: To what extent do you agree that Variable Recurring Payments (VRPs) could provide a viable payment mechanism to support sweeping as defined by the CMA order? Please give reasons for your answers.

Response 5:

FDATA agrees completely that VRP is the correct solution to enable sweeping for the following reasons:

- With the option of SCA exemption or delegated SCA, VRP removes the significant obstacle of customer present access for payment initiation
- An SSP will not have to establish a merchant-acquirer relationship in order to deliver sweeping
- Funds would not be delayed, as they would use the Faster Payments infrastructure, and therefore it mitigates customer detriment risk and improves probability for customer betterment
- It provides for proper consumer transparency and control, and with the proper CEGs for consent dashboards at both the ASPSP and the SSP/PISP, puts in place flexibility for the consumer to manage their sweeping payments more easily
- It reduces overall operational costs for SSPs/PSPs, and therefore improves the competitive playing field for all SSP entrants, which promotes innovative new use cases and drives customer choice with improved outcomes

FDATA would also argue that by expanding VRP/Sweeping to go beyond bank accounts to include savings, pensions, and investments the economies of scale for SSP providers would prove impressive, and vastly improve positive consumer outcomes, the marginal costs of which would be dramatically reduced, i.e., improved ROI for the functionality.

Question 6: Do you see alternative ways to provide a funding mechanism to deliver sweeping as defined by the Order? If so, please describe.

Response 6:

FDATA does not see any additional alternative mechanisms, and therefore concludes, given the analysis criteria, that VRP is the only viable approach to provide sweeping as per the CMA Order.

Question 7: To what extent do you agree that the existing control framework provides appropriate consumer protection for sweeping? Please give reasons for your answers.

Response 7:

FDATA agrees that the existing control framework provides appropriate consumer protection for sweeping. We also maintain that reasonable consumer protections are built into the VRP Consent Parameters, which also allow VRP consent to be revoked via both the PISP and

ASPSP; the conclusion that VRP is the only viable mechanism by which to deliver sweeping therefore means that sweeping as enabled by VRP also has an appropriate consumer protection framework.

We would recommend, as previously noted in our answer to Q1 that conduct risks associated with sweeping from a joint to a sole account are considered.

Moreover, any PISP with a license to operate in the UK market already meets stringent FCA requirements, and will have requisite appropriate risk controls in place, as overseen by FCA supervisory and enforcement divisions. This licensing, supervision, and enforcement framework provides robust consumer protections already, guided by the FCA's Principles for Business which includes fair treatment of the customer, customer trust, and adequate protection of the customer's interests and assets. Sweeping is a PISP activity, and therefore stringently regulated.

Question 8: To what extent do you agree that requiring the Sweeping Service Provider (SSP) to attest that a transaction is sweeping provides an appropriate level of assurance of the use of Sweeping Access? Please give reasons for your answer.

Response 8:

FDATA agrees that requiring an SSP to attest that a transaction is sweeping is an appropriate level of assurance.

We, however, note that for the use case of sweeping from joint account to sole account has much higher conduct risk, and therefore requires further analysis. While the transaction may be a valid sweeping payment, as currently set out, the transaction requires only one party to authorise the movement of money from the joint account into an account in that party's name – it does not imply or consider the other party's authorisation or desires. A better process to manage this conduct risk is essential for this particular use case to meet adequate consumer protection parameters.

Question 9: Are there other risks associated with sweeping and Sweeping Access that need to be considered?

Response 9:

FDATA believes the OBIE has properly assessed the risks associated with sweeping and Sweeping Access. We have no further risks to add.

We agree with the OBIE's conclusion that VRP functionality is necessary and appropriate to deliver sweeping to the UK market, as per the CMA Order. We also agree with the VRP standards as outlined.