



**CONSULTATION BY THE EUROSISTEM ON OVERSIGHT  
STANDARDS FOR EURO RETAIL PAYMENT SYSTEMS  
SUGGESTIONS BY THE EBA**

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## ***1. Introduction***

1. The EBA is of the view that safety and efficiency of payment systems should primarily be a matter of oversight standards and oversight; it is of crucial importance to preserve sufficient room for flexibility and technical neutrality so as to allow for payment systems to evolve in accordance with the needs and developments of the payments market, its various components and the environment in which it functions.

2. Where a framework exists for the standards that apply to systemically important payment systems (hereafter "SIPs"), the EBA welcomes the creation of a framework for other payment systems that do not qualify as SIPs (hereafter referred to as "non-SIPs") as an alternative to voluntary compliance with all or some of the Core Principles (see section 3.0.2 of the BIS report on the Core Principles) in the context of the creation of a true single euro payments area ("SEPA"). References to the BIS report on the Core Principles herein are to Report by the Committee on Payment and Settlement Systems of the central banks of the Group of Ten countries published by the Bank for International Settlements entitled "Core Principles for Systemically Important Payment Systems" of January 2001.

3. The EBA fully supports the policy line to set a common framework for standards that will apply to euro retail payment systems under the oversight of the Eurosystem.

## ***II. Views and suggestions on the application of selected Core Principles***

### ***1. Application of Core Principles to euro retail payment systems***

#### ***1.1 Principle***

4. The Core Principles are an adequate starting point for defining oversight standards for retail payment systems and arrangements. The Core Principles are widely known and recognised and it would be undesirable that a set of different standards would be created in relation to euro retail payment systems that are non-SIPSs (but that may migrate to become SIPSs). The interpretation and implementation of given Core Principles should, as is proposed in the consultation document by the Eurosystem, be proportionate to the type of systems contemplated (see also below).

5. It will be important for the operators and participants in any payment system that objective criteria are set for defining whether a given system qualifies as a type of payment system or arrangement that falls within a given category as to the standards to be observed. The EBA would strongly suggest in that connection that clear criteria, that can be applied in an objective manner for all payment systems and arrangements, are set so that the qualification as a given type of payment system automatically follows from the application of these criteria. In this connection, the EBA notes that the ECB and the NCBs will make transparent which systems are to observe the oversight standards for retail payment systems. It will also be important that, once it is determined that a given payment system or arrangement falls into a given category, the standards to be observed and more particularly the manner in which these have to be interpreted and applied are clearly defined from the outset.

#### ***1.2 Scope***

6. The consultation document states that selected Core Principles would apply to "certain types of retail payment systems". It follows from the consultation document that only euro retail payments systems in the euro area are contemplated, and that systems based on a collection of bilateral agreements as well as bilateral arrangements are excluded from the proposal.

7. The EBA does not see any difficulties in limiting a framework for oversight standards for retail payment systems to systems located in the euro area (whereby the criterion to determine location in the euro area shall need to be defined), but questions whether a more broad application similar to the regime for SIPSs could not be envisaged. The foregoing observation similarly applies to a limitation to payment systems handling the euro.

8. The launching of oversight standards for retail payment systems should go along with a clear definition of "retail payment system". It is thereby assumed that the definition of a payment system as is contained in the Core Principles shall be refined for the purpose of the oversight standards for euro retail payment systems so as to clearly circumscribe the systems contemplated, including, inter alia, in relation to (i) the type of system in terms of its legal basis (e.g. proposed exclusion of hub and spoke arrangements), (ii) the type of system in terms of the payment instruments it handles (e.g. direct debits, cheques, system handling various types of payment instruments, etc.), (iii) the type of system in terms of its settlement arrangements (e.g. arrangements that would rely on other systems for transferring funds).

### ***1.3 Interpretation and implementation***

9. In a concern to achieve a level playing field in the SEPA, the assessment of euro retail payment systems against compliance with the relevant set of standards should be based on a common set of rules and procedures.

10. The EBA welcomes the policy line of the Eurosystem striving at cooperation among the oversight bodies and would suggest that a single body would coordinate the assessment processes so as to ensure consistency and transparency at the level of the implementation of the standards. Also, it will be important that it is clearly defined which entity will be responsible for the oversight of the various euro retail payment systems, including in particular in relation to systems that do not have a clear "domestic" basis.

11. The EBA wishes to signal that the oversight policy for euro retail payment systems should imply that the same degree of compliance for the various standards equally applies to each of the systems that fall under the given set of standards. Where room should be left to assessment against compliance with the standards in the respective circumstances, it is desirable that a suitable coordination process would be put in place so as to ensure that the same criteria for interpreting and implementing the relevant standards are applied in relation to any given relevant system.

12. Oversight standards for euro retail payment systems should be designed such that the operator of the system and the participants are able to ensure and monitor compliance in a cost efficient manner. A fair balance shall need to be struck between the need for retail payment systems to allow for the execution of retail payments at very low prices (cfr. also the principle of "indifference") and the need to ensure a given degree of safety and efficiency for payment systems. In that connection, particular attention shall need to be given to the manner in which the oversight standards are interpreted (and implemented) so as to avoid that the standards and compliance therewith would give rise to the need for (major) investments (e.g. IT developments) or important (recurrent) external costs (e.g. external legal advice).

## ***2 Selection of Core Principles for euro retail payment systems***

### ***2.1 Proposed selection***

13. The EBA is of the view that the proposed selection of Core Principles covers the areas that are relevant to oversight of retail payment systems. The EBA thereby strongly suggests -- given that retail payment arrangements should strive to a maximum degree of automation and cost efficiency --, that compliance with the relevant criteria should, where applicable, (primarily) concern the design of the arrangement. It would also be helpful that clear rules are established in relation to the (timeline for) application of the relevant standards to systems that are built on the basis of, or rely on the migration of, existing systems. Further, as regards Core Principles VIII and X, the EBA would find it helpful that the criteria for their implementation to retail payment systems would be set in such a manner so as to allow that these can be easily and uniformly applied to the various euro retail payment systems that are or will be operating in the euro area.

### ***2.2 Optional compliance with other Core Principles***

14. The explanation provided in the consultation document with respect to optional compliance with Core Principles III, IV, V and (subject to our observations below) VI does not raise any particular concerns, it being understood that compliance with those Core Principles should not be made compulsory at a later stage. In addition, if it would be the intention that optional compliance with the said Core Principles is explicitly covered in the description of oversight standards for retail payment systems and therefore included in the oversight policy, it shall be necessary to assess how a (market) distortion can be avoided between non-SIPs retail payment systems complying with all ten Core Principles and those complying with the selected six Core Principles.

### ***3 Particular issues relating to the application of the Core Principles to retail payment systems***

#### ***3.1 Core Principle I - Legal basis***

15. Core Principle I is key to the well functioning of payment systems. The manner in which Core Principle I is to be implemented in the context of retail payment systems should be proportionate to the level of potential financial risk involved in the system and should respect the need to keep the cost for the handling of retail payments (and of the infrastructure used) at a minimum.

16. On their face, the interpretative provisions in relation to Core Principle I as are contained in part 2 of the BIS report on the Core Principles would allow for Core Principle I to be applied at the level of the design of (i.e. the legal provisions or rules governing) a system. In the case of euro retail payment systems, one could also expect that comfort on the validity and enforceability of the system's rules in relevant jurisdictions other than the jurisdiction of the governing law of the system can (or should) be derived from the legislation implementing the Settlement Finality Directive in as far as the EU jurisdictions are concerned (see also item III below).

17. It will be important that the implementation of Core Principle I takes into account the objectives to be met by retail payment systems in terms of cost efficiency, in particular in the light of the fact that euro retail payment systems will typically attract participants and/or access from various jurisdictions and will wish to be open to participation by entities to which non-EU jurisdictions may be relevant. For example, an implementation of Core Principle I on the basis of the policy that has been adopted for large value net settlement systems -- which all qualify as SIPSs -- relying on (an interpretation stemming from) Lamfalussy Standard I and requiring that reasoned legal opinions from reputable law firms are obtained and regularly updated for all jurisdictions that are relevant to the system could lead to a very high (recurrent) cost (and such cost should be taken into account for determining the cost of the infrastructure, regardless whether it is borne centrally by the operator of the system or by each of the individual participants).

#### ***3.2 Core Principle II - Understanding financial risks***

18. Core Principle II is equally key to participation in payment systems. A full understanding of the financial risks will contribute to the containment of financial risks and bring about an informed decision by participants on their participation in a given retail payment system and the management of the financial risks relating thereto. As is set forth in the consultation document, compliance with Core Principle II should be a matter of the rules governing the system.

### ***3.3 Core Principle VII - Security and operational reliability***

19. Security and operational reliability are obvious components of any payment system. In relation to retail payment systems, a prominent role shall need to be attributed to automation and standard setting in order to contribute to operational reliability and efficiency at a SEPA-wide level.

20. The interpretative provisions contained in part 2 of the BIS report on the Core Principles for SIPSs might need to be refined in relation to retail payment systems. For example, requirements in relation to contingency and business continuity arrangements should be proportionate to the importance of a system for the economy and should take into account the possibility to use other channels in situations of extreme stress.

21. Finally, the implementation of Core Principle VII to retail payment systems should not reach beyond the system's features (e.g. reliability of internal systems at the level of the participants and confidence of the public should not be defined as being part of the "responsibility" of a system to comply with Core Principle VII).

### ***3.4 Core Principle VIII - Efficiency***

22. The manner in which Core Principle VIII should be implemented in relation to retail payment systems does not clearly follow from the interpretative provisions relating to Core Principle VIII as are contained in part 2 of the BIS report on the Core Principles.

23. The requirement according to which a system should be practical for its users should be assessed on the basis of the design of the system and its governance arrangements. As to the requirement according to which a system should be efficient for the economy, it is suggested that compliance will automatically follow from compliance with the legislative framework brought about by the relevant EU legislation in relation to payments in euro, whereby clarification will need to be provided in relation to the assessment of cost recovery principles in a system.

24. Compliance with Core Principle VIII should be assessed on the basis of objective criteria, and their interpretation should be confined to the circle of participants using a given payment system.

25. Finally, the promotion and use of standards as well as automation of processes, taking into account constraints resulting from the migration brought about by the use of the euro in the euro area, will be important in relation to Core Principle VIII.

### ***3.5 Core Principle IX - Access criteria***

26. The EBA fully supports that access criteria should permit fair and open access, which will encourage competition among the entities participating in a payment system at the level of the services and conditions as well as the pricing policy that each of these entities wish to offer in the relationship with their customers.

27. Where access criteria should be based on objective criteria, fair and open access to all users of a given payment system or service should entail that the costs of the infrastructure may be allocated to the users thereof. Access criteria shall also need to be assessed against the design, including the risk profile, and specific requirements of a given system.

### ***3.6 Core Principle X - Governance***

28. Compliance with Core Principle X will not entail any specific problems, it being understood that policy objectives relating to the interest of the public more generally should not be put at the level of the requirements for governance of retail payment systems. Also, the fact that retail payment systems will typically involve a high number of participants will need to be taken into account in the context of the implementation of Core Principle X.

### ***3.7 Optional compliance with Core Principles III - IV - V - VI***

29. The optional compliance with Core Principles III, IV, V and VI as is explained in the consultative document does not raise particular concerns to the extent that such optional compliance by retail payment systems shall need to be placed in the particular context of the retail payment systems at hand. It might be worthwhile to mention that finality for retail payments in euro retail payment systems should ideally follow from adequate legislation in this field.

30. In connection with the settlement assets used for retail payment systems, the EBA is of the view that room should be left for designing the settlement method and settlement operations of euro retail payment systems other than on the basis of the use of central bank funds for discharging the rights and obligations of participants arising from the sending and receiving of retail payment orders in a given retail payment system.



### ***III. Notification under the Settlement Finality Directive***

31. The EBA takes note of the suggestion to foresee notification of retail payment systems with a view to inclusion as designated systems under the Settlement Finality Directive. The EBA would be supportive of a policy that would allow to derive a sufficient degree of comfort in relation to the subject matters covered by the Settlement Finality Directive from inclusion of the relevant systems as designated systems under the Directive.

32. However, the EBA wishes to highlight that the definition of a system under the Settlement Finality Directive will not necessarily allow to cover the various types of systems and arrangements that are in existence or in the course of being built. Also, doubt exists as to the types of instruments that are covered by the Directive, in particular having regard to the provisions defining irrevocability of transfer orders.

33. In relation to euro retail payment systems in particular, it is to be taken into account that the implementation of Article 8 of the Directive is not very clear in all EU jurisdictions, and that the Directive does not bring about a "protection" in relation to non-EU jurisdictions.

34. Inclusion of a system as a designated system under the Settlement Finality Directive would not necessarily achieve that the same degree of comfort would apply in relation to the various systems and/or their participants. The various legislations implementing the Finality Directive in each of the EU jurisdictions show minor or major divergences both at the level of their scope (e.g. notification of a system does not necessarily bring the protection of the legislation implementing the Directive and certain legislations limit the applicability of all or part of the protective provisions to systems that are governed by the relevant laws of the given jurisdiction) and at the level of the protection offered (e.g. in relation to collateral, voidable preferences, the types of insolvency proceedings that are covered, the types of participation that are covered).

35. The EBA would suggest that a detailed assessment is made of the legislation implementing the Settlement Finality Directive in each of the EU jurisdictions in view of determining whether notification of systems and their inclusion as designated systems could (be made to) apply to all euro retail payment systems and bring about the applicability of the "protective" legislative provisions in each of the EU jurisdictions to each designated system.