

OVERSIGHT FRAMEWORK FOR CARD PAYMENT SCHEMES - STANDARDS

SUMMARY OF COMMENTS RECEIVED DURING THE PUBLIC CONSULTATION

On 3 May 2007 the Eurosystem launched a public consultation inviting interested parties to comment on the Eurosystem's draft Oversight Standards for Card Payment Schemes (CPSs). The aim of the initiative is to develop a common set of oversight standards that allow euro area central banks to assess the smooth functioning of card payment schemes operating in the euro area in accordance with the Treaty establishing the European Community and the Statute of the European System of Central Banks and of the European Central Bank.

Market participants actively participated in the consultation procedure, in some cases coordinating their answers within representative bodies and submitted 23 responses in total. Responses were received from card payment schemes, banking associations, issuers/acquirers, and retail and consumer associations.

In general, the responders expressed overall support for the proposal for the establishment of a harmonised oversight framework. The Eurosystem appreciates all contributions received, but cannot comment in detail on all of them in this summary. Many of these editorial and technical comments have been taken into account in the revised version of the oversight framework. In addition, several responses were of an explanatory nature and described market expectations with regard to specific systems or market infrastructure arrangements. This summary presents the main comments and gives the Eurosystem's response.

General comments

Many responders requested the Eurosystem to clarify the scope of the framework, in particular, its applicability to three-party and four-party schemes. In this regard, the necessary amendments were made in the final version of the framework, including a revised functional definition of what the Eurosystem considers to be a "Card Payment Scheme". Thus, the Eurosystem would like to underline that the definition of what constitutes a CPS under this framework shall not be reduced only to the entity owner of the scheme. The Eurosystem intends to cover the whole payment cycle, as well as the actors that participate in it.

In response to the comments received, it is worth clarifying that the oversight framework is applicable in principle to all CPSs operating in the euro area, wherever the Governance Authority and any other CPS function are located.

In reaction to comments received concerning the legal basis under which the new oversight framework will be applied, the Eurosystem would like to reiterate that the framework does not represent a new regulation, but instead presents a set of oversight expectations expressed in the form of standards in accordance with its role outlined in a public statement issued by the Eurosystem in 2000. Therefore, the Eurosystem will use the word "standard" rather than "requirement" in order to avoid confusion. Moreover, it should be clarified that the oversight standards presented in this framework are independent

of any legal (i.e. European Union legislation) requirements or market-driven best-practices, such as the SEPA. In particular, the European Union Payment Services Directive (PSD) addresses payment service providers in general and not CPSs specifically. The standards are the result of a risk analysis and do not aim at verifying compliance with legally binding requirements and cannot force CPSs to go beyond what is mandatory by law. In doing so, the Eurosystem is merely executing its mandate to promote the smooth functioning of payments systems, which includes safeguarding the safety and efficiency of CPSs.

The Eurosystem would like to underline that the main addressee of this framework is the Governance Authority of the CPS. However, in agreement with the overseer, the Governance Authority may appoint other actor(s) that are responsible for certain CPS functions (in accordance with Annex 1 of the CPS oversight standards report) to become subject to the oversight activity.

Commentators proposed that a single oversight entity should be established to oversee CPSs, in particular, when they are present in more than one euro area country. In that respect, the Eurosystem is in the process of establishing a cooperative oversight framework for overseeing CPSs whose functions are disseminated in more than one country. Moreover, in order to ensure a harmonised interpretation of the standards by the overseers and a level playing field for all overseen CPSs, an assessment methodology document will be developed. As is the case with similar oversight activities for oversight assessments of payment systems (i.e. large-value and retail payment systems), it is envisaged that peer reviews will also be conducted with the aim of harmonising the oversight assessments performed by overseers when considering whether a CPS has implemented an “adequate degree of security” in its scheme. The envisaged process will also achieve a harmonised assessment of generalised expectations concerning the adequate degree of security or the implementation of appropriate measures by the CPSs.

A few comments were received calling for the abolishment of the waiver policy. The Eurosystem is very supportive of the establishment of a level playing field in the euro area. However, the waiver policy has been adopted on grounds of proportionality across the market. The Eurosystem would like to ensure that all risks covered in the framework are relevant to the waived CPSs, which could benefit from complying with it.

The Eurosystem also acknowledges the market concerns regarding the cost of complying with the oversight standards. However, since the standards have been set using a risk-based approach and formulated as a minimum level, compliance costs are expected to be low given the prerequisite for CPSs to have already mitigated the associated risks through their internal risk management procedures.

With regard to the inclusion of reputational risk in the list of risk profiles, the Eurosystem would like to reiterate that such risks can have a severe impact on the confidence of the retail instrument, as a result, for example, of unexpected operational incidents and other reasons that are relevant to the scope of oversight in ensuring the efficiency and security of the schemes.

A few commentators also challenged the Eurosystem’s intention to focus on governance issues for cross-border CPSs. Indeed, governance issues are important in order to ensure the appropriate organisation of decision-making processes and the management of daily business. Therefore, the Eurosystem believes that governance needs to be addressed. However, this is true for all CPSs and not only for those acting across borders, and the framework has been adapted accordingly.

Standard 1 – The CPS should have a sound legal basis in all relevant jurisdictions.

Comments were received from responders regarding compliance with competition and data protection regulation. Standard 1 has been revised accordingly, clearly stating that data protection and competition rules are beyond the scope of central bank oversight and that CPSs are subject to supervision by other competent authorities in this regard.

Comments were received asking for specific reference to retailers and merchants to be included in the scope of the standard. The definition given in the glossary for the term “actors” covers all such entities. Finally, a comment pertaining to the unbundling of schemes is also considered to be outside the scope of the standard.

Standard 2 – The CPS should ensure that comprehensive information, including appropriate information on financial risks, is available to the actors.

Standard 2 has been slightly revised in order to reflect comments received regarding the provision of information by the CPS to its actors. Moreover, following a few comments regarding the provision of information to potential CPS actors, the Eurosystem amended the Standard in order to allow potential actors to evaluate possible risks stemming from participation in the CPS (e.g. disclosure of data processing operations with regard to policy on processing personal data, etc).

Based on a few comments, the Eurosystem also revised the definition of the “financial risk” profile. The definition has now been amended so as to clearly distinguish the concept of financial risk from that of financial loss, which was not sufficiently clear in the previous version.

Standard 3 – The CPS should ensure an adequate degree of security, operational reliability and business continuity.

In general, all the relevant comments supported Standard 3, although some associated issues were broached, such as data protection or possible overlap with EU legal acts (e.g. the Payment Services Directive) or initiatives (e.g. the SEPA). The Eurosystem would like to reiterate the independence of this framework from existing EU regulations and market initiatives. As already stated, the oversight standards are derived from a risk analysis performed by the Eurosystem. However, overseers will also expect CPSs to comply with the applicable EU regulations and market initiatives. With regard to comments regarding market initiatives to address CPS security issues, such as PCI, EMV, etc., the Eurosystem would like to underline that the Governance Authority for each CPS would be the main addressee of the oversight activity, but other actors responsible for certain functions could also be part of the oversight activity where the Governance Authority has no responsibility for them.

In connection with the reference in Standard 3 to the achievement of an “adequate degree of security”, a few responses requested the Eurosystem to include minimum requirements in this oversight framework in a similar way to other Eurosystem oversight frameworks. The Eurosystem would like to clarify that the use of the word “adequate” in this standard is aimed at emphasising the various cases of risk which CPSs have to mitigate. CPSs remain responsible for the choice of methods to mitigate the remaining risks concerning the functions for which it is responsible.

Some responses also requested the security evaluation process to be applied by the overseers to be included in the Standard. The Eurosystem would like to make it clear that security evaluation will be covered in the assessment methodology to be drawn up by the overseers and will apply to all card payment schemes.

Standard 4 – The CPS should have effective, accountable and transparent governance arrangements.

Some respondents indicated that the oversight standards could specify the establishment of CPS governance arrangements in order to protect the interests of all actors. In this respect, a suggestion was made to include an independent board member to represent the interests of consumers. The Eurosystem has taken due note of the suggestion, but underlines that the framework tries not to be overly prescriptive in leaving the manner in which CPSs want to comply with the standards to the CPSs.

Comments were received emphasising the need for scheme-owned processors to have separate governance arrangements and, more importantly, separate funding. As stated earlier, the Eurosystem considers the specific comments as being outside the scope of the oversight framework.

Some respondents pointed out that the oversight standards for governance and access are mainly relevant to four-party schemes and not to three-party schemes. The Eurosystem's view is that the standards will be applied to all schemes and that specificities will be taken into account during the oversight assessment.

Some respondents expressed the view that the "Eurosystem standards for retail payment systems (RPSs)" already addressed oversight concerns in the sector. However, the Eurosystem is of the opinion that the RPS standards are for use by overseers to assess retail payment systems only and not the relevant payment instruments. Therefore, the Eurosystem considers that the oversight concerns expressed in Standard 4 remain valid.

Standard 5 – The CPS should manage and contain financial risks in relation to the clearing and settlement process.

Comments were received from interested parties inviting the Eurosystem to ensure that third party clearing and settlement providers will be subject to the same set of oversight standards. One of the foremost objectives of this framework is to ensure that all CPSs and, where relevant, their actors will be assessed in accordance with the same standards. This would be the case for third party clearing and settlement providers as described in the standard.

The particularity of three-party schemes was highlighted in some of the comments received. The Eurosystem would like to clarify that Standard 5 is, in principle, also applicable to three-party schemes. However, the overseers will take into consideration and evaluate the particularities of different CPSs during the assessment. The Eurosystem intends for relevant card payment schemes to have rules in place for governing the settlement between participants.

Some respondents also requested the Eurosystem to include a clause on dispute resolution for disputes regarding "failure-to-settle mechanisms" in CPSs. The Eurosystem is of the opinion that this remark is already incorporated indirectly through a combination of Standard 2 and 5. Therefore, in order not to be overly prescriptive, these suggestions were not taken on board.