



EBA CLEARING comments on the consultative report on Assessment Methodology for the principles for FMIs and the responsibilities of authorities of April 2012 by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organisation of Securities Commissions (IOSCO)

15 June 2012

Introduction

EBA CLEARING welcomes the invitation by the CPSS and IOSCO to reply to the consultation on the CPSS-IOSCO proposed assessment methodology for the principles for FMIs and the responsibilities of authorities (hereafter referred to as “Assessment Methodology”).

EBA CLEARING is a privately owned company, incorporated in France, whose shareholders are the participants in the EURO1 system. EBA CLEARING has been formed in 1998. Since the launch of the EURO1 system on the first day of Stage III of European Monetary Union, EBA CLEARING acts as the system operator of EURO1.

EURO1 is a multilateral large value net payment system for payments denominated in euro operating alongside TARGET2, the real time gross transfer system of the central banks of the Eurosystem.

Since 2003, EBA CLEARING also provides the retail payment system STEP2. In January 2008 respectively November 2009, STEP2 services were built for handling bulk SEPA Credit Transfers and SEPA Direct Debits (Core and B2B), which settle in TARGET2 (STEP2-T System). STEP2-T is the Pan-European ACH for bulk payments in the Single Euro Payments Area (SEPA).

Since its launch, EURO1 is overseen by the European Central Bank (ECB). STEP2 is equally overseen by the ECB.

Reference is made to www.ebaclearing.eu for general information on EBA CLEARING and the systems it operates.

Comments on the Assessment Methodology

The Assessment Methodology states that it is primarily intended for external assessors at the international level, in particular the IMF and the Worldbank. EBA CLEARING would welcome an insight on the plans of the overseer of the systems it operates regarding the choice between using the Assessment Methodology as is or developing different methodologies for oversight assessments. In that connection, it may be worthwhile to underline that use of different methodologies should not lead to different requirements or different interpretations of requirements stemming from the application of the Principles for financial market infrastructures (hereafter referred to as “PFMIs”).

Comments on the Assessment Methodology provided herein should be read to also apply to equivalent methodologies developed by the relevant regulatory, supervisory or oversight authorities.

1. Comments solicited on the comprehensiveness of the Assessment Methodology:

There are four areas on which EBA CLEARING would welcome more guidance in the Assessment Methodology, namely:

1. Guidance on the required cooperation between assessors and the to be assessed FMI is of the utmost importance. In particular, we believe that the assessors and the management of the FMI have to work in close cooperation to allow for an efficient and not too burdensome performance of the assessment for both parties. To this effect, the FMI which has to maintain ongoing business during the assessment period must be informed sufficiently in advance of the intended assessment and be provided with a detailed assessment plan including a clear description of the purpose and scope of the assessment (i.e. the system or service of the FMI to be assessed, the list of relevant Principles, key considerations, and key elements, etc.), the timeframe for the different steps of the assessment, etc. This would allow the FMI to prepare for the assessment and dedicate the required staff and means for cooperating with and assisting the assessors without affecting daily business.
2. The Assessment Methodology could usefully be complemented with a clarification that the information collecting process should be such that only information that is relevant should be provided by the assessed FMI.
3. As regards the timeframe for implementing changes in case there are issues of concern, the Assessment Methodology should state that such timeframe shall be set thereby taking into account change cycles and cycles and processes for decision making of the FMI. A FMI should be consulted on the timeframes to ensure these are feasible.
4. We believe that the report should include guidance for assessors' organisational aspects in order to ensure there are Chinese-walls between senior executives and staff carrying out the oversight and supervision functions and, if applicable, senior executives and staff dedicated to the operation of a public sector FMI.

We believe some elements are missing in the Assessment Methodology:

1. The Assessment Methodology should foresee a process to allow the assessed FMI to review the assessment reports in a draft form, to allow for corrections and suggestions.
2. It is noted that no guidance is given on cases where the assessed FMI would not agree with the conclusions or with certain summaries.
3. In case recommendations are provided by assessors, a degree of flexibility should be built in to allow the FMI to consider, if applicable, different means to address the issue of concern at hand, and also to evaluate the recommendation from an efficiency perspective.

4. The Assessment Methodology should be complemented with clear guidance on publication of assessment results. An FMI should be asked for agreement with the text that would be published in the public domain, and should have the right to object to certain information being published. In that connection, insufficient consideration is given to the fact that private sector FMIs, acting in a competitive environment and investing in the know-how and technical, legal, operational and risk design of the systems they operate, have different concerns relating to putting information in the public domain compared to public sector FMIs. EBA CLEARING has no problem with certain information being available in the public domain, but the level of information that is provided publicly should be left at the discretion of the FMI.

2. Comments solicited on the clarity of the Assessment Methodology:

EBA CLEARING would wish to point to the following:

1. The Assessment Methodology states that the questions are not intended to be exhaustive and that assessors could, at their discretion, pose additional or different questions as needed depending on the circumstances. EBA CLEARING believes this is a too open ended statement, in particular if this could lead to imposing additional requirements or more stringent requirements compared to the PMFIs, or, as applicable, the PMFIs as implemented by the relevant regulatory, supervisory or oversight authority.
2. The 2 payment systems operated by EBA CLEARING constitute a FMI with cross-border activity. EURO1, the large value payment system of EBA CLEARING, is overseen by the ECB as lead overseer with the voluntary participation by National Central Banks having an interest in the oversight of the system. In that connection, EBA CLEARING would wish to comment that a single set of requirements, in the form of key considerations and key questions, should form the basis of an oversight assessment. This point will also be very relevant if and when the STEP2-T System, catering for the processing of SEPA payment instruments, would become subject to the PFMI and would become subject to a similar oversight regime.
3. With regard to external assessments to be conducted by international financial institutions out of the scope of the supervision and oversight of the FMI, we would like that clarification is provided on whether the outcome of such external assessments would be binding on the assessed FMI and would be given enforceable effects or taken into consideration by the relevant authority in charge of the supervision / oversight of the FMI. In particular, any room for confusion that could result from different assessments being carried out by different assessors on the basis of different assessment methodologies should be avoided.
4. More guidance and clarity on the assessment of FMI links and the methodology used on a per FMI basis would be welcomed.

5. As to the definition of the assessment perimeter, we would wish that the Assessment Methodology clarifies whether and, if so, which of and to what extent stakeholders are concerned / covered. For instance, participating financial institutions are included in the definition of FMI; would that mean that participants (or participants with the most important volumes or of a critical importance) would also be assessed? Is it intended that shareholders of the FMI are also included in the scope of the assessment? If so, we strongly advocate that it is specified in the assessment plan that will be notified in advance to the FMI.

3. Comments solicited on the level of detail in the Assessment Methodology:

The detailed questions call for the following observations on the part of EBA CLEARING:

1. EBA CLEARING would have appreciated that the proposed Assessment Methodology includes specific guidance on the assessment of payment systems such as a multilateral net system without a central counterparty. As previously shared, EBA CLEARING is of the opinion that a list of questions in itself does not provide sufficient guidance on the exact meaning and scope of the requirements the fulfillment whereof is assessed through such list of questions. A separate assessment methodology for each type of FMI would have been appreciated to avoid further interpretation issues and questions on the applicability of any of the key considerations or key elements.
2. If the questions are maintained as they are, room should be left to evaluate whether they are relevant / effective taking into account the specificities of a given FMI. Further, from an efficiency perspective, room should be left to conclude that certain requirements must not be met in the same manner by all FMIs. For specific types of FMI, flexibility should be given in relation to certain requirements the fulfillment of which will not bring any assurance that the initial purpose is reached.
3. Conversely, if the questions are meant to each relate to a requirement that must be met in all cases, more refinement is needed for some of those in that depending on the type of FMI some key considerations could not apply or call for a different focus.
4. EBA CLEARING has major concerns on two approaches that are embedded in the questions, from the viewpoint of a system operator of interbank payment systems:
 - (i) For an interbank payment system, the relationships are among the participants and between the participants and the system operator. The relationships with customers should be kept outside of the context of the system, and should be left at the level of the financial institutions participating in the payment system. Communications with customers, and contractual and other relationships with customers should not be brought into the perimeter of the FMI, and this is believed to bring a new type of risk that is not necessary.



EBA CLEARING reply to CPPS & IOSCO Consultative Report on Assessment Methodology
April 2012

- (ii) EBA CLEARING strongly believes that putting the rules of a payment system or parts thereof (e.g. default rules) in the public domain attracts risks that are unnecessary. Reference is made to the concerns raised in our reply to the public consultation on the PFMI, which remain unchanged.
- 5. Both for EBA CLEARING and its participants, it is of the utmost importance that requirements are clear and predefined. We note that several sets of requirements are developed or being developed (e.g. the disclosure framework, the ECB oversight expectations for links between retail payment systems, the upcoming oversight expectations for stress testing, etc.), which seem to add requirements in addition to those contained in the PFMI / Assessment Methodology. A clear view on the full set of requirements applicable to a given type of FMI should be provided, preferably in the form of a comprehensive single Assessment Methodology.