



EBA CLEARING

EBA CLEARING comments on the consultative report “Disclosure framework for financial market infrastructures” 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 disclosure framework for financial market infrastructures (hereafter referred to as “Disclosure Framework”).

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.

The present reply to the consultation is in 2 parts. In the first part, a reply to the specific points raised in the cover note to the report is provided. In the second part, input is provided on a number of major points in relation to which EBA CLEARING requires further clarification or would like to share views.

Part 1 – Comments on the specific points contained in the cover note to the consultative report

EBA CLEARING would wish to convey the following comments in relation to the points which are the subject matter of the cover note to the consultative report on Disclosure Framework:

We would appreciate it if clarification could be given on whether FMIs would have to prepare and publish separate disclosure framework papers for each of their systems or services (for example, would EBA CLEARING as system operator of the EURO1 System and STEP2-T System¹ have to complete and provide a disclosure framework for each system, or would one covering both systems be sufficient

¹ Should the STEP2-T System become subject to the PFMIIs.



considering that such systems pertain to different categories of payment systems and are separately overseen²?).

In addition, a clear and detailed description would be required of the key metrics specific to payment systems and that will have to be included in the general description of the FMI.

Furthermore, clarification would also be needed on whether the principle-by-principle narrative disclosure would have to or could be provided at the occasion of the oversight assessment exercise carried out by the relevant overseers of the FMI or should be independently provided and updated.

PART 2 - Comments on major points and concerns regarding the proposed Disclosure Framework

EBA CLEARING would wish to convey a number of questions and points of concern which will need clarification, amendment or at least adjustment of the Disclosure Framework for each particular type of FMI.

1. General comment on the proposed Disclosure Framework:

While fully sharing the public policy objectives defined by the CPSS and IOSCO, EBA CLEARING does not see – in as far as interbank fund transfer systems are concerned -- the value of or the rationale for a transparency beyond the relevant FMI's stakeholders and authorities. The transparency and disclosure requirements have to be tailored to the type, importance, functioning of each FMI, and to the risks incurred or brought by each FMI to its participants and market. In this connection, consideration is also to be given to the fact that certain types of FMI have been and are more regulated and supervised than others; FMIs, such as systemically and prominently important payment systems, have been complying with relevant rules and requirements for the safety and stability of the financial markets in close cooperation with the relevant overseers. EBA CLEARING believes that the current practice as is followed for oversight of systemically important payment systems in relation to disclosure is sufficient and effective and doubts on the appropriateness of the proposed disclosure framework for (interbank) payment systems.

2. Comment on upcoming additional disclosure requirements:

Reference is made in the cover note to the consultative report to a set of key quantitative information under development by the CPSS and IOSCO that FMIs will have to provide and which will require more frequent updating than of the Disclosure Framework. EBA CLEARING strongly recommends a consistent and comprehensive unique disclosure program for each type of FMI.

² EURO1 is a large-value payment system classified as a SIPS while STEP2-T is a prominently important retail payment system.

3. Comment on the requirement for transparency and public disclosure:

As previously commented on the CPSS-IOSCO consultative report of March 2011, EBA CLEARING would like to restate that where disclosure to relevant market participants and to relevant regulatory / supervisory / oversight authorities is fully supported, it is believed that a requirement for public disclosure should be avoided for private sector-owned payment systems. Any requirement for disclosure to the general public of an FMI's strategic or sensitive information (e.g. the system's rules and procedures, admission criteria, suspension and exclusion procedures, default management, pricing, etc.) could entail potential risks for such FMI. Disclosure to third-party entities should be left to the discretion of the management of the FMI. Furthermore, any mandatory disclosure to prospective participants must be submitted to the signature of a confidentiality and non-disclosure agreement.

4. Comment on the FMI disclosure template:

EBA CLEARING supports the provision of a general description of the FMI, as currently available on its website³ which provides substantive information for each of the systems or services it operates as well as the structure and management of the company. However, such transparency should not endanger the protection of the FMI's know-how, methods of doing business, trade and commercial secrets, specifications and technologies, etc. and must only take place provided the integrity of existing intellectual property rights and the protection of confidential information are preserved.

EBA CLEARING believes that the scope of disclosure that is proposed may attract new types of risk which are unnecessary, e.g. mal-interpretation including by non or less knowledgeable recipients of the information contained in the public disclosures that are made, legal risks stemming from reliance on narrative statements paraphrasing the actual legal and other relevant documentation, reliance on statements for making claims which otherwise would not be available, interpretations by the media and related overreactions in the markets, soliciting unwanted behaviour of participants in systems, inviting the markets to test weak points or alleged weak points. In that connection, EBA CLEARING would wish to submit the question what the intended legal effects of the imposed disclosure are, in particular taking into account the care to be taken by an FMI to ensure legal soundness and safety and stability of the systems it operates.

³ <https://www.ebaclearing.eu/>