

TEMPLATE: Comments on the draft documents

CONTACT DETAILS

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|-------------------------------------|--|---|
| Name of the organisation | EBA CLEARING | may be published with your consent, see "Disclose comments" below |
| Name of the contact person | Jessica Ramos | will not be published |
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|-------------------|----------------------------|
| Disclose comments | Yes, with institution name |
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The table below serves as a template for processing comments received in a standardised manner.

- o Please only add issues to the table if you consider that follow-up is necessary, i.e. please do not make general statements like "We welcome the changes." Do not make introductory statements about your company/association.
- o All comments should be presented by issue so that thematic sorting can easily be performed later (i.e. one row for each issue).
- o If necessary, replicate the table to provide further comments.

The response template consists of the following items, and should be filled in as follows:

- **Amending legal act:** please indicate the which amending legal act you are commenting on.
- **Article and Paragraph of proposed legal act:** please indicate the article and paragraph in the amending legal act.
- **Article and Paragraph of legal act being amended:** *only where a provision in the original legal act is being amended*, please indicate the article and paragraph in the legal act that is being amended.
- **Original text:** please copy the text you are commenting on.
- **Comment:** please suggest any amendment or deletion.
- **Reasoning:** please make a short statement explaining why the comment should be taken on board.

| No | Proposed amending act | Article and Paragraph of proposed legal act | Article and Paragraph of legal act being amended | Original Text | Comment | Reasoning |
|----|---|--|--|---|---|--|
| | <i>[Please indicate the document concerned using the drop-down list]</i> | <i>[Please indicate the Article and Paragraph concerned]</i> | <i>[If applicable, please indicate the relevant Article and paragraph of the original legal act]</i> | <i>[Please provide the text you are commenting on]</i> | <i>[Please provide your input]</i> | <i>[Please provide your input]</i> |
| | <i>e.g. "Regulation amending ECB/2014/28 / the SIPS Regulation"</i> | <i>e.g. "Art. 1 (2)" or, for recitals, "Recital 1"</i> | <i>e.g. "Art. 2 (5)"</i> | <i>e.g. "(a) the Eurosystem national central bank with primary oversight responsibility identified as such pursuant to Article Article 1(2);"</i> | <i>e.g. "editorial amendment: drop 'Article' one time"</i> | <i>e.g. "Article is included twice, i.e. 'Article Article'"</i> |
| 1 | Regulation amending Regulation ECB/2014/28 on oversight requirements for systemically important payment systems | Article 1 (a) | Article 1, paragraph 3a | | '3-a. Notwithstanding paragraph 3, the Governing Council, exercising sound and reasoned judgement, and only where the criteria established in Article 1, paragraph 3 (b) (i), (ii), (iii) and (iv) is not sufficient to carry out the assessment , may decide that a payment system shall be identified as a SIPS in either of the following cases: (a) where such a decision would be appropriate taking into account the nature, size and complexity of the payment system; the nature and importance of its participants; the substitutability of the payment system and the availability of alternatives to it; and the relationship, interdependencies, and other interactions the system has with the wider financial system; (b) where a payment system does not meet the criteria set out in paragraph 3 solely because the requirements established in point (b) of paragraph 3 occur over a period of less than a calendar year and it is plausible that the payment system will continue to meet the criteria when assessed in the next verification review.; The Governing Council Decision shall include the reasoning behind it and will be disclosed in a transparent manner. | FIRST: The proposed ammendment introduces a risk that payment systems - which are already under the scope of Oversight by the Eurosystem- be classified as a SIPS in a moment in time where they do not yet meet the criteria laid out in Article 1, paragraph 3 (b) (i), (ii), (iii) and (iv) of the SIPS Regulation. We understand that this is not the intention of the ammendment. Therefore, the Eurosystem may consider adding the proposed language to ensure that the current criteria, which has been effectively applied for exisiting payment systems since the issuing of the Regulation in 2014, remains the preferred option for classifying payment systems as SIPS, and that the proposed forms of assessment, which are less measurable, are only used where the existing criteria is not possible to quantify or obtain. SECOND: It is essential that the decision be documented as a formal Governing Council Decision. It will also be important for the System Operator and the general public to understand what the basis for the Governing Council's decision is. The text as proposed, allows for a subjective assessment to be carried out, with elements that are not measurable. Therefore, such transparency will be necessary to ensure proportionality and equality in each assessment and to ensure that the principle of maintaining a level playing field is respected. Furthermore, it is important that the decision is a formal Governing Council Decision. THIRD: In terms of the implementation, EBA CLEARING recommends that the Eurosystem ensures that classification of a payment system carried out under the proposed methodology is applied equally to all payment systems that could potentially meet the applied criteria. This will be key so as to not distort the level playing field principle. |