

7. Juni 2013

PRESSEMITTEILUNG

EZB WILL VERORDNUNGSENTWURF ZU DEN ÜBERWACHUNGSANFORDERUNGEN FÜR SYSTEMISCH RELEVANTE ZAHLUNGSVERKEHRSSYSTEME KONSULTIEREN

Die Europäische Zentralbank (EZB) veröffentlicht heute im Rahmen des öffentlichen Konsultationsverfahrens einen Verordnungsentwurf zu den Überwachungsanforderungen für systemisch relevante Zahlungsverkehrssysteme. Der Verordnungsentwurf zielt darauf ab, die „Prinzipien für Finanzmarktinfrastrukturen“ im Eurogebiet umzusetzen, die im April 2012 von zwei Ausschüssen eingeführt wurden: dem Ausschuss für Zahlungsverkehrs- und Abrechnungssysteme (Committee on Payment and Settlement Systems – CPSS) der Bank für Internationalen Zahlungsausgleich sowie dem Technischen Ausschuss der Internationalen Organisation der Wertpapieraufsichtsbehörden (International Organization of Securities Commissions – IOSCO). Die Verordnung ersetzt die vom CPSS entwickelten „Grundprinzipien für Zahlungsverkehrssysteme, die für die Stabilität des Finanzsystems bedeutsam sind (Core principles for systemically important payment systems)“, die das Eurosystem 2001 verabschiedete und die seither Anwendung finden.

In den CPSS-IOSCO-Prinzipien zur Harmonisierung und Stärkung der bestehenden internationalen Überwachungsstandards wird festgelegt, dass für Zahlungsverkehrssysteme mit systemischer Relevanz angesichts ihres Risikopotenzials für das gesamte System eine wirksame Überwachung anhand von eindeutig definierten und öffentlich zugänglichen Kriterien gelten sollte. Zudem sollten die zuständigen Behörden mit hinreichenden Befugnissen und Mitteln ausgestattet sein, um ihre Überwachungsaufgaben wahrzunehmen und auch Korrekturmaßnahmen einzuleiten. CPSS-IOSCO empfehlen, diese Prinzipien unter Wahrung des jeweiligen Rechts- und Aufsichtsrahmens so weit wie möglich umzusetzen.

Der Verordnungsentwurf, mit dem die CPSS-IOSCO-Prinzipien rechtsverbindlich umgesetzt werden, betrifft sowohl Individual- als auch Massenzahlungsverkehrssysteme mit systemischer Relevanz, unabhängig davon, ob sie von nationalen Zentralbanken des Eurosystems oder von privaten Stellen betrieben werden. Er legt Kriterien fest, um ein Zahlungsverkehrssystem als systemisch relevant einzustufen. Ein Verzeichnis dieser Zahlungsverkehrssysteme, ihrer entsprechenden Betreiber und der zuständigen Überwachungsorgane wird vom EZB-Rat verabschiedet und auf der Website der EZB veröffentlicht. Die im Verordnungsentwurf festgelegten Anforderungen sollen eine wirksame Steuerung von rechtlichen, kredit- und liquiditätsbezogenen, operationellen und allgemeinen Geschäfts-, Verwahr- und Anlagerisiken sowie sonstigen Risiken sicherstellen und darüber hinaus solide Steuerungsstrukturen, einen objektiven und offenen Zugang sowie Effizienz und Effektivität systemisch relevanter Zahlungsverkehrssysteme gewährleisten. Diese Anforderungen orientieren sich an den spezifischen Risiken, denen derartige Systeme unterliegen.

Der Verordnungsentwurf stimmt vollständig mit den CPSS-IOSCO-Prinzipien überein. Sofern notwendig, wurden die Formulierungen der CPSS-IOSCO-Prinzipien überarbeitet, um das erforderliche Maß an Detailtiefe aus Gründen der Rechtssicherheit zu gewährleisten.

Um sicherzustellen, dass Betreiber von Zahlungsverkehrssystemen die Anforderungen wirksam umsetzen, sieht der Verordnungsentwurf für Überwachungsbehörden die Möglichkeit vor, Korrekturmaßnahmen zu verlangen, um die Nichteinhaltung der Verordnung zu beheben bzw. eine Wiederholung dieser Handlung zu verhindern. Zudem haben die Behörden das Recht, bei Verstößen wirksame, angemessene und abschreckende Sanktionen zu verhängen.

Der Verordnungsentwurf beinhaltet eine Übergangsfrist von einem Jahr, sodass sich die Betreiber eingehend mit den Anforderungen befassen und diese umsetzen können.

Der Verordnungsentwurf der EZB zu den Überwachungsanforderungen für systemisch relevante Zahlungsverkehrssysteme ist auf der Website der EZB abrufbar. Die EZB lädt alle interessierten Kreise ein, den Entwurf bis zum 9. August 2013 zu kommentieren und dabei das im Anhang beigefügte Formular zu verwenden. Alle eingegangenen Stellungnahmen werden im Internet veröffentlicht, sofern der Verfasser der Veröffentlichung nicht ausdrücklich

widerspricht. Die Antworten sind in Englisch oder einer Amtssprache der EU unter folgender Anschrift an die EZB zu richten:

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Die Stellungnahmen können auch an die jeweilige nationale Zentralbank des Eurosystems gesendet werden.

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REGULATION OF THE EUROPEAN CENTRAL BANK (EU) No .../2013
of [date Month] 2013
on oversight requirements for systemically important payment systems

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union and, in particular Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and, in particular Article 3.1, Article 22 and the first indent of Article 34.1 thereof,

Whereas:

- (1) The fourth indent of Article 127(2) of the Treaty and the fourth indent of Article 3.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’) empower the Eurosystem to promote the smooth operation of payment systems.
- (2) The Eurosystem promotes the smooth operation of payment systems, *inter alia*, by conducting oversight.
- (3) In January 2001, the Eurosystem adopted the Core Principles for Systemically Important Payment Systems developed by the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements (BIS) as minimum requirements for systemically important payment systems (SIPS)¹.
- (4) In April 2012, the Core Principles for Systemically Important Payment Systems were replaced by the CPSS and the Technical Committee of the International Organization of Securities Commission’s (IOSCO) principles for financial market infrastructures (hereinafter the ‘CPSS-

¹ Available on the BIS’s website at www.bis.org/publ/cpss43.pdf.

DRAFT

IOSCO principles')², which harmonise and strengthen existing international oversight standards for, *inter alia*, SIPS.

- (5) According to the CPSS-IOSCO principles, SIPS should be subject to effective oversight, against clearly defined and publicly disclosed criteria, because of their potential to trigger systemic risks if insufficiently protected against the risks to which they are exposed. In addition, competent authorities should have sufficient powers and resources to fulfil their respective tasks, including taking corrective action. The CPSS-IOSCO recommends implementing these principles to the fullest extent allowed by the national legal and regulatory frameworks.
- (6) Therefore, and in order to ensure the efficiency and soundness of SIPS, the European Central Bank (ECB) has decided to implement the CPSS-IOSCO principles by means of a regulation. Authorities in other countries are also expected to similarly introduce and apply the CPSS-IOSCO principles in their respective legal and regulatory framework to the fullest extent allowed by such framework.
- (7) This Regulation covers SIPS, including both large-value payment systems and retail payment systems of systemic importance. It applies to payment systems operated both by central banks and private operators. The requirements for payment systems operated by central banks reflect the different risk profiles and statutory responsibilities of the central banks.
- (8) Under Guideline ECB/2012/27 of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)³ TARGET2 has a decentralised structure linking together a multiplicity of payment systems. The TARGET2 component systems are harmonised to the greatest extent possible with certain exceptions in the event of national law constraints. TARGET2 is also characterised by a single technical platform called the Single Shared Platform. The Governing Council has final competence in relation to TARGET2 and safeguards its public function: this governance arrangement is reflected in the oversight of TARGET2.
- (9) The efficiency and soundness of a SIPS requires compliance with applicable national laws and clear rules, procedures and contracts under which it operates. Compliance with the law refers to the legal systems of all countries in which a SIPS operator or its participants operate.
- (10) The efficiency and soundness of a SIPS also depends on the clarity and appropriateness of its governance arrangements, which must be clearly documented.
- (11) A sound and evolving framework to comprehensively manage legal, credit, liquidity, operational, general business, custody, investment and other risks is essential to identify, measure, monitor and manage the entire range of risks that arise in or are borne by a SIPS operator. This also holds true for the soundness and resilience of a SIPS operator's collateral framework participant default rules and procedures and business continuity plans.

² Available on the BIS's website at www.bis.org/publ/cpss101a.pdf.

³ OJ L 30, 30.1.2013, p. 1.

DRAFT

- (12) The reduction of systemic risk requires, *inter alia*, settlement finality. The Union has adopted Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems⁴. Directive 98/26/EC requires the rules for systems designated under it to define the moment of entry (after which transfer orders shall be legally enforceable and, even in the event of insolvency proceedings against a participant, binding on third parties) and the moment of irrevocability of transfer orders. Intraday or real time settlement may also be advisable if compatible with the SIPS general business model and necessary to enable the SIPS operator and participants to manage their respective credit and liquidity risks.
- (13) Objective, risk-based, and publicly disclosed criteria for participation in a SIPS, permitting fair and (subject to acceptable risk control standards) open access to a SIPS, promote the safety and efficiency of the SIPS and of the markets it serves, while not restricting free provision of services to a disproportionate extent.
- (14) An overall efficient and effective SIPS, with clearly defined, measurable and achievable goals and objectives, is best equipped to meet the needs of the SIPS participants and the markets it serves.
- (15) The ECB has recourse to the national central banks to carry out ESCB tasks to the extent deemed possible and appropriate.
- (16) The requirements laid down in this Regulation are proportionate to the specific risks and exposures of SIPS.
- (17) The possibility for overseers to request corrective measures to remedy or avoid repetition of non-compliance with this Regulation, and to impose effective, proportionate and dissuasive sanctions for infringements of this Regulation is an essential element in implementing the CPSS-IOSCO principles to the fullest extent allowed under the Treaty and the Statute of the ESCB.
- (18) It is necessary to subject compliance with the oversight requirements set by this Regulation to a transitional period, allowing for the SIPS operators to familiarise themselves with and to implement the requirements.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation lays down oversight requirements for SIPS.
2. The Governing Council shall adopt a decision identifying the payment systems that are subject to this Regulation, their respective operators and competent authorities. This list shall be maintained on the ECB's website and updated after each change.

⁴ OJ L 166, 11.6.98, p. 45.

DRAFT

3. A payment system shall be identified as a SIPS if: (a) it is eligible to be notified as a system pursuant to Directive 98/26/EC by a Member State whose currency is the euro or its operator is established in the euro area; and (b) at least two of the following occur over a calendar year:
- (i) the total daily average value of euro-denominated payments processed exceeds EUR 10 billion;
 - (ii) its market share is at least one of the following:
 - 15% of total volume of euro-denominated payments at euro area level;
 - 5% of total volume of euro-denominated cross-border payments at euro area level;
 - 75% of total volume of euro-denominated payments at the level of a Member State whose currency is the euro;
 - (iii) its cross-border activity (i.e. participants established in a country other than that of the SIPS operator and/or cross border links with other payment systems) involves five or more countries and generates a minimum of 33% of the total volume of euro-denominated payments processed by that SIPS;
 - (iv) it is used for the settlement of other FMIs.
4. SIPS operators shall ensure compliance of the SIPS they operate with the requirements set out in Articles 3 to 21.

Article 2

Definitions

For the purposes of this Regulation:

- (1) ‘payment system’ means a formal arrangement between three or more participants, not counting possible settlement banks, central counterparties clearing houses or indirect participants, with common rules and standardised arrangements for the execution of transfer orders between the participants;
- (2) ‘systemic risk’ means the risk that the inability of a participant or the SIPS operator to meet their respective obligations in a SIPS will cause other participants and/or the SIPS operator to be unable to meet their obligations when they become due, potentially with spillover effects threatening the stability of or confidence in the financial system;
- (3) ‘SIPS operator’ means the legal entity legally responsible for operating a SIPS;
- (4) ‘competent authority’ means the Eurosystem central bank with primary oversight responsibility identified as such pursuant to Article 1(2);
- (5) ‘Eurosystem SIPS’ means SIPS owned and operated by a Eurosystem central bank;

DRAFT

- (6) 'legal risk' means the risk arising from the application of law or regulation, usually resulting in a loss;
- (7) 'credit risk' means the risk that a counterparty, whether a participant or other entity, will be unable to fully meet its financial obligations when they fall due or at any time in the future;
- (8) 'liquidity risk' means the risk that a counterparty, whether a participant or other entity, will have insufficient funds to meet its financial obligations when they fall due, although it may have sufficient funds to do so in the future;
- (9) 'operational risk' means the risk that deficiencies in information systems or internal processes, human error, management failures, or disruptions caused by external events or outsourced services will result in the reduction, deterioration or breakdown of services provided by a SIPS;
- (10) 'custody risk' means the risk of incurring a loss on assets held in custody in the event of a custodian's or sub-custodian's insolvency, negligence, fraud, poor administration or inadequate recordkeeping;
- (11) 'investment risk' means the risk of loss faced by a SIPS operator or participant when the SIPS operator invests its own or its participants' resources, e.g. collateral;
- (12) 'market risk' means the risk of losses, in both on- and off-balance sheet positions, arising from movements in market prices;
- (13) 'deferred net settlement system' (DNS) means a system which settles on a net basis at the end of a predefined settlement cycle, e.g. at the end of, or during, the business day;
- (14) 'cross-border collateral' means collateral for which, from the perspective of the country in which the assets are accepted as collateral, at least one of the following is foreign: (a) the currency of denomination; (b) the country in which the assets are located; or (c) the country in which the issuer is established;
- (15) 'cross-border payment' means a payment between participants established in different countries;
- (16) 'financial market infrastructure' (FMI) means a multilateral system among participating institutions, including the system operator, used to clear, settle, or record payments, securities, derivatives, or other financial transactions;
- (17) 'participant' means an entity that is identified or recognised by a payment system and, either directly or indirectly, is allowed to send transfer orders to that system and is capable of receiving transfer orders from it;
- (18) 'the Board' means the administrative or supervisory board of a SIPS operator, or both, in accordance with national law;
- (19) 'the Management' means executive directors, i.e. members of a unitary board who are engaged in the daily management of the SIPS operator and members of a managerial board of the SIPS operator in a dual board system;

DRAFT

- (20) 'relevant stakeholders' means participants, FMIs that have an impact on the risk in a SIPS, and, on a case-by-case basis, other affected market actors;
- (21) 'credit exposure' means an amount or value at risk that a participant will not settle for full value, either when due or at any time thereafter;
- (22) 'collateral' means an asset or third-party commitment that is used by a collateral provider to secure an obligation vis-à-vis a collateral taker. Collateral includes both domestic and cross-border collateral;
- (23) 'liquidity provider' means a provider of cash under Articles 5(3), 6(5), 8(1), 8(9) and 8(11) or assets under Article 8(4), including a SIPS participant or external party;
- (24) 'extreme but plausible market conditions' means a comprehensive set of historical and hypothetical conditions, including the most-volatile periods that have been experienced by the markets the SIPS serves;
- (25) 'intended settlement date' means the date that is entered into SIPS as the settlement date by the sender of a transfer order;
- (26) 'general business risk' means any potential impairment of the financial position of the SIPS as a business concern as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital;
- (27) 'recovery and orderly wind-down plan' means a plan developed by the SIPS operator to re-establish the smooth operation of the SIPS, or to orderly close the SIPS, after experiencing financial losses or in case of insolvency;
- (28) 'material' qualifies a risk, a dependency and/or a change which may affect the ability of an entity to perform or provide services as expected;
- (29) 'relevant authorities' means authorities who have a legitimate interest in accessing information from a SIPS to fulfil their statutory requirements, e.g. resolution authorities and supervisors of major participants;
- (30) 'principal risk' means the risk that the seller or buyer of a currency will deliver such currency or pay without the corresponding payment or delivery taking place. This excludes the interest payable on the obligation;
- (31) 'custodian bank' means a bank holding and safeguarding the financial assets of third parties;
- (32) 'settlement bank' means a bank holding accounts with regards to payments, where the discharge of obligations arising from a payment system takes place;
- (33) '*nostro* agent' means a bank used by the participants in a SIPS for settlement;
- (34) 'one-sided payment' means a payment in one currency;
- (35) 'two-sided payment' means a payment involving two transfers in different currencies;

DRAFT

- (36) 'wrong-way risk' means risk arising from exposure to a participant or issuer when the collateral provided by that participant or issued by that issuer is highly correlated with its credit risk.

Article 3

Legal soundness

1. A SIPS operator shall assess whether the applicable law in all relevant legal systems provides a high degree of certainty for and supports each material aspect of the activities of its SIPS.
2. A SIPS operator shall establish SIPS rules and procedures and enter into contracts, which are clear and consistent with the applicable law in all relevant legal systems.
3. A SIPS operator shall be able to specify the applicable law, rules, procedures and contracts for the operation of a SIPS to competent authorities, participants, and, where relevant, participants' customers, in a clear and understandable way.
4. A SIPS operator shall take measures to ensure that its rules, procedures, and contracts are enforceable in all relevant legal systems, and that the actions it takes under such rules, procedures and contracts will not be voided, reversed, or subject to stays.
5. A SIPS operator conducting business in more than one legal system shall identify and mitigate the risks arising from any potential conflict of laws.
6. A SIPS operator shall use its best efforts to ensure the SIPS's designation under Directive 98/26/EC.

Article 4

Governance

1. A SIPS operator shall have documented objectives which place a high priority on the safety and efficiency of the SIPS. The objectives shall explicitly support financial stability and other relevant public interest considerations, in particular open and efficient financial markets.
2. A SIPS operator shall have documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements shall be made available to the competent authority, owners and participants. A SIPS operator shall make abridged versions thereof available to the public.
3. The Board's roles and responsibilities shall be clearly defined. The Board's roles and responsibilities shall include all of the following:
 - (a) establishing clear strategic aims for the SIPS;

DRAFT

- (b) establishing documented procedures for the SIPS' functioning, including procedures to identify, address and manage conflicts of interest of its members;
 - (c) with the exception of Eurosystem SIPS, ensuring the effective selection, monitoring, and, where appropriate, removal of members of Management;
 - (d) with the exception of Eurosystem SIPS, establishing appropriate compensation policies, consistent with best practices and based on long-term achievements.
4. Except for Eurosystem SIPS, the Board shall review both its overall performance and the performance of its individual Board members at least annually.
5. The Board's composition shall ensure integrity and, except for Eurosystem SIPS, an appropriate mix of technical skills, knowledge and experience both of SIPS and of the financial market in general, allowing the Board to fulfil its respective roles and responsibilities. The composition shall depend further on the general allocation of competencies according to the national law. Except for Eurosystem SIPS, when permitted by national law, the Board shall include non-executive board members.
6. Management's role, responsibilities and reporting lines shall be clearly defined. The composition shall ensure integrity and an appropriate mix of technical skills, knowledge and experience both of SIPS and of the financial market in general, allowing Management to fulfil its responsibilities for the operation and risk management of the SIPS operator. Management's responsibilities shall include, under Board direction, ensuring all of the following:
- (a) that the SIPS operator's activities are consistent with its objectives, strategy and risk tolerance;
 - (b) that internal controls and related procedures are appropriately designed, executed and overseen in order to promote the SIPS operator's objectives;
 - (c) that internal controls and related procedures are subject to regular review and testing by well-trained and sufficiently staffed risk-management and internal-audit functions;
 - (d) active involvement in the risk-control process;
 - (e) that sufficient resources are allocated to the SIPS's risk-management framework.
7. The Board shall establish and oversee a documented risk-management framework, which shall:
- (a) include the SIPS operator's risk-tolerance policy;
 - (b) assign responsibilities and accountability for risk decisions;
 - (c) address decision making in crises and emergencies;
 - (d) address internal control functions.

The Board shall ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the Board.

DRAFT

8. The Board shall ensure that major decisions affecting the SIPS's technical and functional setup, rules and overall strategy, in particular, with regard to choice of a clearing and settlement arrangement, operating structure, scope of products cleared or settled, and use of technology and procedures, appropriately reflect the legitimate interests of the SIPS's relevant stakeholders. The relevant stakeholders and, where appropriate, the public shall be consulted reasonably in advance on such decisions.

Article 5

Framework for the comprehensive management of risks

1. A SIPS operator shall establish and maintain a sound risk-management framework to comprehensively identify, measure, monitor and manage the range of risks that arise in or are borne by the SIPS. It shall review the risk-management framework at least annually. The risk-management framework shall:
 - (a) include the SIPS operator's risk-tolerance policy and appropriate risk-management tools;
 - (b) assign responsibility and accountability for risk decisions;
 - (c) address decision-making in emergency situations relating to a SIPS, including developments in financial markets potentially having an adverse effect on market liquidity and the stability of the financial system in any Member State whose currency is the euro where the SIPS operator or one of the participants are established.
2. A SIPS operator shall provide incentives to participants and, where relevant, their customers to manage and limit the risks they pose to and bear from the SIPS.
3. A SIPS operator shall review the material risks the SIPS bears from and poses to other entities, including, *inter alia*, FMIs, settlement banks, liquidity providers and service providers, as a result of interdependencies at least annually. The SIPS operator shall develop risk-management tools that are robust and proportionate to the identified level of risk.
4. A SIPS operator shall define the SIPS' critical operations and services. The SIPS operator shall identify specific scenarios that may prevent it from being able to provide these critical operations and services as a going concern and assess the effectiveness of all options for recovery or, with the exception of Eurosystem SIPS, an orderly wind-down. It shall review the SIPS' critical operations and services at least annually. Based on this assessment, a SIPS operator shall prepare a plan for the SIPS' recovery or, except for Eurosystem SIPS, an orderly wind-down. The recovery and orderly wind-down plan shall contain, *inter alia*, a substantive summary of the key recovery and orderly wind-down strategies, a restatement of the SIPS's critical operations and services, and a description of the measures needed to implement the key strategies. A SIPS operator shall, where

DRAFT

applicable, provide relevant authorities with the information needed for purposes of resolution planning. It shall review the recovery and orderly wind-down plan at least annually.

5. With regards to participants, a SIPS operator shall establish an effective, proportionate and dissuasive financial penalties regime and/or loss-sharing arrangements.

Article 6

Credit risk

1. A SIPS operator shall establish a robust framework to measure, monitor and manage its credit exposures to its participants and credit exposures amongst participants arising from the SIPS payment, clearing, and settlement processes.
2. A SIPS operator shall identify all sources of credit risk. The measurement and monitoring of credit exposures shall take place throughout the day, using timely information and appropriate risk-management tools.
3. A SIPS operator, including one operating a DNS with a settlement guarantee, that in the course of SIPS operations incurs credit exposure vis-à-vis its participants, shall cover its credit exposure to each participant using collateral, guarantee funds, equity (after deduction of the amount dedicated to cover general business risk) and other equivalent financial resources.
4. A SIPS operator, including one operating a DNS with no settlement guarantee, but where participants face credit exposures arising from the SIPS payment, clearing and settlement processes, shall have in place rules or contractual arrangements with these participants. The rules or contractual arrangements shall ensure that the participants will provide sufficient resources, as defined in paragraph 3, to cover credit exposures resulting from the SIPS payment, clearing and settlement processes in relation to the two participants which, together with their affiliates, have the largest aggregate credit exposure.
5. A SIPS operator shall establish rules and procedures to address losses directly resulting from defaults by one or more participants on their obligations to the SIPS. These rules and procedures shall address the allocation of potentially uncovered losses, including the repayment of any funds a SIPS operator may borrow from liquidity providers. They shall include the SIPS operator's rules and procedures to replenish any financial resources used by the SIPS during a stress event, to the level laid down in paragraph 3.

Article 7

Collateral

1. A SIPS operator shall only accept the following assets as collateral: (a) cash; and (b) assets with low credit, liquidity and market risks, i.e. assets for which the SIPS operator can demonstrate to

DRAFT

the competent authority based on an adequate internal assessment that they meet all of the following conditions:

- (i) they have been issued by an issuer with low credit risk;
- (ii) they are freely transferable without any legal constraint or third party claims;
- (iii) they present low market risk;
- (iv) they are denominated in a currency the risk of which is managed by the SIPS operator;
- (v) they have reliable price data published on a regular basis;
- (vi) they are not otherwise subject to significant wrong-way risk;
- (vii) they are not issued by the participant providing the collateral or an entity that is part of the same group as that participant, except in the case of a covered bond and only where the assets in the cover pool are appropriately segregated within a robust legal framework and satisfy the requirements set out in points (i) to (vi).

In performing the internal assessment of points (i) to (vii), the SIPS operator shall define, document and apply an objective methodology.

2. A SIPS operator shall establish and implement policies and procedures to monitor the credit quality, market liquidity and price volatility of each asset accepted as collateral. A SIPS operator shall monitor on a regular basis, and at least annually, the adequacy of its valuation policies and procedures. Such review shall also be carried out whenever a material change occurs that affects the SIPS's risk exposure. A SIPS operator shall mark-to-market its collateral at least on a daily basis.
3. A SIPS operator shall establish stable and conservative haircuts and shall test them at least annually and take into account stressed market conditions. Haircut procedures shall be validated by personnel other than those who created and applied the haircut procedures at least annually.
4. A SIPS operator shall take measures to avoid concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects.
5. A SIPS operator that accepts cross-border collateral shall identify and mitigate the risks associated with its use and ensure that the cross-border collateral can be used in a timely manner.
6. A SIPS operator shall use an effective and operationally flexible collateral management system.
7. Paragraphs 1 shall not apply to Eurosystem SIPS.

DRAFT

Article 8

Liquidity risk

1. A SIPS operator shall establish a comprehensive framework to manage liquidity risks posed by the SIPS's participants, settlement banks, *nostro* agents, custodian banks, liquidity providers and other relevant entities.
2. A SIPS operator shall put in place operational and analytical tools, which enable it to identify, measure and monitor settlement and funding flows, including the use of intraday liquidity, on an on-going and timely basis.
3. A SIPS operator shall hold sufficient liquid resources at all times, in all currencies in which it operates, to effect same-day settlement of payment obligations in a wide range of potential stress scenarios. Where appropriate, this shall include intraday or multiday settlement. The stress scenarios shall include: (a) a default, under extreme but plausible market conditions, of the participant which, together with its affiliates, has the largest aggregate payment obligation; and (b) other scenarios in accordance with paragraph 11.
4. A SIPS operator settling one-sided payments in euro shall hold liquid resources, in accordance with paragraph 3, to effect timely settlement of payment obligations in the event of a default of the participant which, together with its affiliates, has the largest aggregate payment obligation as determined by paragraph 3(a) in any of the following ways:
 - (a) in cash with the Eurosystem; or
 - (b) in eligible collateral as defined in the collateral framework of the Eurosystem laid down in Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem⁵, if the SIPS operator has access to Eurosystem standing facilities.
5. A SIPS operator settling one-sided payments in euro shall hold additional liquid resources, in accordance with paragraph 3(b), in the ways defined in paragraph 4 or with a creditworthy commercial bank in one or more of the following instruments:
 - (a) committed lines of credit;
 - (b) committed foreign exchange swaps;
 - (c) committed repos;
 - (d) assets as defined in Article 7(1), which are held by a custodian;
 - (e) investments that are readily available and convertible into cash with prearranged funding arrangements for which the SIPS operator can demonstrate to the competent authority, based on an adequate internal assessment, that the funding arrangements are highly reliable, even in extreme but plausible market conditions.

⁵ OJ L 331, 14.12.2011, p. 1.

DRAFT

The SIPS operator shall be prepared to demonstrate to the competent authority, based on an adequate internal assessment, that the commercial bank is creditworthy.

6. A SIPS operator settling two-sided payments or one-sided payments in currencies other than the euro shall hold liquid resources, in accordance with paragraph 3, in ways defined in paragraph 5.
7. Where a SIPS operator supplements the resources referred to in paragraph 3 with other assets, these assets shall be likely to be marketable or acceptable as collateral (for *e.g.* lines of credit, swaps, or repos) on an *ad hoc* basis following a default, even if this cannot be reliably prearranged or guaranteed under extreme but plausible market conditions. Assets shall be presumed as likely to be marketable or acceptable as collateral if the SIPS operator has taken into account the rules and practices of the relevant central bank on the eligibility of collateral.
8. A SIPS operator shall not assume that emergency central bank credit will be available.
9. A SIPS operator shall carry out due diligence to verify that each provider of the SIPS' liquid resources under paragraph 3: (a) has sufficient and up-to-date information to understand and to manage its liquidity risks associated with the provision of cash or assets; and (b) has the capacity to provide cash or assets as required. A SIPS operator shall review its compliance with the due diligence obligation at least annually. Only entities with access to credit from the central bank of issue shall be accepted as liquidity providers. A SIPS operator shall regularly test its procedures for accessing the SIPS liquid resources.
10. A SIPS operator with access to central bank accounts, payment services or securities services shall use these services, where practicable.
11. A SIPS operator shall, through rigorous stress testing determine how much cash and other assets are required to satisfy the requirements under paragraphs 3 and 4. It shall regularly review this amount, *inter alia*, by considering a wide range of scenarios, including:
 - (a) the peak historic price volatilities of the above mentioned assets;
 - (b) shifts in other market factors including, *inter alia*, price determinants and yield curves;
 - (c) one or more participant defaults on the same day and on different subsequent days;
 - (d) simultaneous pressures in funding and assets markets,
 - (e) a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

Such scenarios shall also take into account the design and operation of the SIPS; examine all entities that might pose material liquidity risks to the SIPS, including, *inter alia*, settlement banks, *nostro* agents, custodian banks, liquidity providers, and linked FMIs; and where appropriate, cover a multiday period.

12. A SIPS operator shall document its reasons for holding, and shall have appropriate governance arrangements relating to, the amount of cash and other assets it maintains. It shall establish clear

DRAFT

procedures for reporting the results of its stress tests to the Board. It shall use these results to evaluate the adequacy of and make adjustments to its liquidity risk-management framework.

13. A SIPS operator shall establish clear rules and procedures enabling the SIPS to effect same-day and, where appropriate, timely intraday and multiday settlement of payment obligations following the default of one or more of its participants. These rules and procedures shall:
 - (a) address unforeseen and potentially uncovered liquidity shortfalls;
 - (b) aim to avoid the unwinding, revocation or delay of same-day settlement of payment obligations;
 - (c) indicate how to replenish the cash and other assets used by the SIPS during a stress event, to the extent required pursuant to paragraphs 3 to 5.

Article 9

Final settlement

A SIPS operator shall ensure that final settlement takes place no later than the end of the intended settlement date.

Article 10

Money settlements

1. A SIPS operator settling one-sided payments in euro shall ensure that final settlement takes place in central bank money.
2. A SIPS operator settling two-sided payments or one-sided payments in currencies other than euro shall ensure that final settlement takes place in central bank money where practicable and available.
3. If central bank money is not used, a SIPS operator shall ensure that money settlements take place using a settlement asset with little or no credit and liquidity risk.
4. If a settlement takes place in commercial bank money, the SIPS operator shall monitor, manage, and limit credit and liquidity risks arising from the commercial settlement banks. In particular, the SIPS operator shall establish and monitor adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalisation, access to liquidity, and operational reliability. The SIPS operator shall also monitor and manage the concentration of credit and liquidity exposures to the SIPS's commercial settlement banks.
5. If a SIPS operator conducts money settlements on its own books, it shall minimise and strictly control its credit and liquidity risks.

DRAFT

6. A SIPS operator's legal agreements with any commercial settlement banks shall state clearly:
 - (a) when transfers on the books of individual settlement banks are expected to occur;
 - (b) that transfers are to be final when effected;
 - (c) that funds received shall be transferable as soon as possible, at least by the end of the day.

Article 11

Payment versus payment

A SIPS operator using a payment versus payment mechanism shall eliminate principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs. This rule shall be followed regardless of whether settlement takes place on a gross or net basis and when finality occurs.

Article 12

Participant-default rules and procedures

1. A SIPS operator shall establish a definition of participant default in the SIPS rules and procedures, which shall include, as a minimum, a participant's failure to meet its financial obligations when they fall due, as a result, *inter alia*, of operational reasons, breach of agreement, or the commencement of insolvency proceedings against such participant. A SIPS operator shall distinguish between automatic and discretionary default. In the case of discretionary default, the SIPS operator shall specify which entity shall exercise that discretion. It shall review this definition at least annually.
2. A SIPS operator shall have default rules and procedures that enable it to continue to meet its obligations in the event of a participant default, which address the replenishment of resources following a default. The rules and procedures shall define, as a minimum, all of the following:
 - (a) the actions that a SIPS operator can take when a default occurs;
 - (b) whether taking such actions is automatic or discretionary and the means by which that discretion is exercised;
 - (c) potential changes to a SIPS operator's normal settlement practices to ensure timely settlement;
 - (d) the management of payments at different stages of processing;
 - (e) the probable sequencing of actions;

DRAFT

- (f) the roles, obligations and responsibilities of the relevant parties, including non-defaulting participants;
 - (g) other mechanisms to be activated to limit the impact of a default.
3. A SIPS operator shall be prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules. A SIPS operator shall ensure, *inter alia*, that: (a) it has the operational capacity, including sufficient well-trained personnel, to implement the procedures outlined in paragraph 2 in a timely manner; and (b) the SIPS's rules and procedures address documentation, information and communication needs, and, when more than one FMI or authority is involved, coordination.
 4. A SIPS operator shall publicly disclose the key aspects of the rules and procedures outlined in paragraph 2, including, as a minimum, all of the following:
 - (a) the circumstances in which action shall be taken;
 - (b) who shall take those actions;
 - (c) the scope of the actions which shall be taken;
 - (d) the mechanisms to address a SIPS operator's obligations towards non-defaulting participants.
 5. A SIPS operator shall test and review the SIPS rules and procedures outlined in paragraph 2 at least annually or after any material changes to the SIPS affecting those rules and procedures. A SIPS operator shall involve SIPS participants and relevant stakeholders in such testing and review.

Article 13

General business risk

1. A SIPS operator shall establish robust management and control systems to identify, monitor, and manage general business risks, including losses resulting from poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses.
2. A SIPS operator shall hold liquid net assets funded, by equity, e.g. common stock, disclosed reserves or other retained earnings, so that it can continue operations and services as a going concern if it incurs general business losses. The amount of these assets shall be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down of its critical operations and services if such action is taken.
3. A SIPS operator shall maintain a viable recovery or, except for Eurosystem SIPS, orderly wind-down plan.
4. A SIPS operator shall hold sufficient liquid net assets funded by equity to implement the plan referred in paragraph 3. As a minimum, a SIPS operator shall hold liquid net assets funded by

DRAFT

equity with a value equal to at least six months of current operating expenses. These assets are in addition to resources held to cover participant defaults or other risks covered under Articles 6 and 8. Equity held under international risk-based capital standards may be included to avoid duplicate capital requirements.

5. Assets held to cover general business risk shall be of sufficient liquidity and high quality to be available in a timely manner. The SIPS operator shall be able to realise such assets with little, if any, adverse price effect, so that it can continue operations as a going concern if it incurs general business losses.
6. A SIPS operator shall establish a viable plan for raising additional equity should its equity fall close to or below the amount referred to in paragraph 4. The plan shall be submitted to the Board for approval and be updated at least annually.
7. Paragraphs 2 and 4 to 6 shall not apply to Eurosystem SIPS.

Article 14

Custody and investment risks

1. A SIPS operator shall hold its own and participants' assets with supervised and regulated entities (hereinafter the 'custodians'), that have accounting practices, safekeeping procedures and internal controls that fully protect these assets against the risk of loss in the event of a custodian's or sub-custodian's insolvency, negligence, fraud, poor administration or inadequate recordkeeping.
2. A SIPS operator shall have timely access to its assets and the assets provided by the participants.
3. A SIPS operator shall evaluate and understand its exposures to its custodian banks, taking into account the full scope of its relationships with each.
4. A SIPS operator shall establish its investment strategy, which shall be consistent with its overall risk-management strategy and fully disclosed to the participants. It shall review the investment strategy at least annually.
5. A SIPS operator's investments under its investment strategy shall be secured by, or be claims on, high-quality obligors. A SIPS operator shall define the criteria for high-quality obligors. Investments shall be in instruments with minimal credit, market and liquidity risks.
6. Paragraphs 3 to 5 shall not apply to Eurosystem SIPS.

Article 15

Operational risk

1. A SIPS operator shall establish a robust framework with appropriate systems, policies, procedures and controls to identify, monitor and manage operational risk.

DRAFT

2. A SIPS operator shall establish service level and operational reliability objectives and policies designed to achieve those objectives. It shall review the objectives and policies at least annually.
3. A SIPS operator shall ensure that a SIPS, at all times, has scalable capacity to handle increases in payment volumes that occur due to stress events, and that it can achieve its service level objectives.
4. A SIPS operator shall establish comprehensive physical and information security policies that adequately identify, assess and manage all potential vulnerabilities and threats. It shall review the policies at least annually.
5. A SIPS operator shall establish a business continuity plan that addresses events posing a significant risk of disrupting the SIPS' operations. The plan shall include the use of a secondary site and be designed to ensure that critical information technology systems can resume operations within two hours of those events. The plan shall be designed in such a way that the SIPS is always able to settle all payments due by the end of the operational day on which the disruption occurs. The SIPS operator shall test the plan and review it at least annually.
6. A SIPS operator shall identify critical participants based, in particular, on payment volumes and values and their potential impact on other participants and the SIPS as a whole, in the event of a significant operational problem experienced by such participants.
7. A SIPS operator shall identify, monitor, and manage the risks that critical participants, other FMIs, and service and utility providers might pose to the SIPS' operations.

Article 16

Access and participation criteria

1. A SIPS operator shall establish and publicly disclose non-discriminatory access and participation criteria to the SIPS's services for direct, and, where relevant, indirect participants and for other FMIs. It shall review the criteria at least annually.
2. The access and participation criteria of paragraph 1 shall be justified in terms of the safety and efficiency of the SIPS and the markets it serves, and be tailored to and commensurate with the SIPS's specific risks. If a SIPS operator admits non-regulated entities, it shall take into account any additional risks that may arise from their participation and design the participation requirements and risk-management controls of the SIPS accordingly. In compliance with the principle of proportionality, a SIPS operator shall set requirements that restrict access to the minimum possible extent. If a SIPS operator denies access to an entity, it shall give reasons in writing for this, based on a comprehensive risk analysis.
3. A SIPS operator shall monitor participants' compliance with the SIPS's access and participation criteria on an ongoing basis. It shall establish and publicly disclose non-discriminatory procedures to facilitate the suspension and orderly termination of a participant's right of participation where

DRAFT

the participant fails to comply with the access and participation criteria. It shall review the procedures at least annually.

Article 17

Tiered participation arrangements

1. For the purpose of risk management, a SIPS operator shall ensure that the SIPS's rules, procedures and contractual arrangements allow it to gather information about indirect participation in order to identify, monitor and manage any material risks to the SIPS arising from participation. This information shall, as a minimum, cover all of the following:
 - (a) the proportion of activity that direct participants conduct on behalf of indirect participants;
 - (b) the number of indirect participants that settle via individual direct participants;
 - (c) the volumes or values of payments in the SIPS originating from each indirect participant;
 - (d) the volumes or values of payments under point (c) in proportion to those of the direct participant through which the indirect participant accesses the SIPS.
2. A SIPS operator shall identify material dependencies between direct and indirect participants that might affect the SIPS.
3. A SIPS operator shall identify indirect participants who pose material risks to the SIPS and the direct participants through which they access the SIPS with a view to managing these risks.
4. A SIPS operator shall review the risks arising from tiered participation arrangements at least annually. It shall take mitigating action when needed to ensure that the risks are properly managed.

Article 18

Efficiency and effectiveness

1. A SIPS operator shall have a process to identify and meet the needs of the markets the SIPS serves, in particular, with regard to:
 - (a) choice of a clearing and settlement arrangement;
 - (b) operating structure;
 - (c) scope of products cleared or settled;
 - (d) use of technology and procedures.
2. A SIPS operator shall have clearly defined goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations and business priorities.

DRAFT

3. A SIPS operator shall have established mechanisms for the regular, at least annual, review of the requirements laid down in paragraphs 1 and 2.

Article 19

Communication procedures and standards

A SIPS operator shall use or accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement and recording.

Article 20

Disclosure of rules, key procedures and market data

1. A SIPS operator shall adopt clear and comprehensive rules and procedures that are fully disclosed to participants. Relevant rules and key procedures shall also be publicly disclosed.
2. A SIPS operator shall disclose clear descriptions of the system's design and operations, as well as the SIPS operator's and participants' rights and obligations, so that participants can assess the risks they would incur by participating in the SIPS.
3. A SIPS operator shall provide all necessary and appropriate documentation and training to facilitate participants' understanding of the SIPS' rules and procedures and the risks they face from participating in the SIPS.
4. A SIPS operator shall publicly disclose the SIPS's fees at the level of individual services it offers as well as its discount policies. The SIPS operator shall provide clear descriptions of priced services for comparability purposes.
5. A SIPS operator shall complete and disclose publicly responses to the CPSS-IOSCO Disclosure framework for financial market infrastructures at least annually. A SIPS operator also shall, at a minimum, disclose basic data on transaction volumes and values.

Article 21

Disclosure to the competent authority

The competent authority shall have the right to obtain from a SIPS operator all information and documents necessary to assess compliance with the requirements under this Regulation. A SIPS operator shall report information to competent authorities in line with their specification.

Article 22

DRAFT

Corrective measures

1. Where a SIPS operator has not complied with this Regulation, the competent authority shall:
 - (a) inform the SIPS operator of the nature of the non-compliance; and
 - (b) provide the SIPS operator the opportunity to be heard and provide explanations.
2. Based on the information provided by the SIPS operator, the competent authority may instruct the SIPS operator to implement specific corrective measures in order to remedy the non-compliance and/or avoid repeating it.
3. The competent authority may impose corrective measures immediately where it identifies, with a reasoned opinion, that the case of non-compliance is serious enough to require immediate action.
4. The competent authority shall immediately inform the ECB of any corrective measures imposed on a SIPS operator.
5. Corrective measures may be imposed independent of or in parallel with sanctions in accordance with Council Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions.

Article 23

Sanctions

In case of an infringement of this Regulation, the ECB shall impose sanctions, in accordance with Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions⁶ and Regulation (EC) No 2157/1999 of the European Central Bank of 23 September 1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4)⁷ The ECB shall publish a notice on the methodology for the calculation of the amount of the sanctions.

Article 24

Final provisions

1. This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.
2. SIPS operators shall have one year from the date on which this Regulation enters into force to comply with the requirements laid down in this Regulation.

⁶ OJ L 318, 27.11.1998, p. 4.

⁷ OJ L 264, 12.10.1999, p. 21.

DRAFT

Done at Frankfurt am Main, [date Month 2013].

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

TEMPLATE: COMMENTS ON THE DRAFT "REGULATION OF THE EUROPEAN CENTRAL BANK ON OVERSIGHT REQUIREMENTS FOR SYSTEMICALLY IMPORTANT PAYMENT SYSTEMS"

Contact details (will not be published)	Ms; Mr	NAME OF THE CONTACT PERSON
	EMAIL ADDRESS OF THE CONTACT PERSON	
	PHONE NUMBER OF THE CONTACT PERSON	
<input type="checkbox"/>	The comments provided should <u>NOT</u> be published	

The table below shall serve as a template collecting comments received in a standardised way.

- Please **add** to the table **only issues where you consider that a follow-up is necessary**, i.e. no general statements like “We welcome the regulation.”
- All comments should be **separated per issue** concerned so that a thematic sorting can be easily applied later on (i.e. one row for each issue).
- If needed, replicate page 2 for the provision of further comments.

The assessment form consists the four items which are suggested to be filled as follows:

- **Originator:** Name of the originator and ISO code of the country of the originator (e.g. NAME (AT/BE/BG/...))
- **Issue** (states the topic concerned): General comment, Recitals, Article number, Definitions, Terminology
- **Comment:** Suggestion for amendment, clarification or deletion
- **Reasoning:** Short statement why the comment should be taken on board

ECB-PUBLIC

Originator:

Name of the originator (e.g. name of the company or association)	NAME OF THE COMPANY, ASSOCIATION, OR CITIZEN	ISO code of the country of the originator	
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Comments on the Regulation of the European Central Bank on oversight requirements for systemically important payment systems

Issue	Comment	Reasoning
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	
	Amendment; Clarification; Deletion	