

Regulation of the European Central Bank (EU) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems (ECB/2014/28)

REGULATION OF THE EUROPEAN CENTRAL BANK (EU) No 795/2014

of 3 July 2014

on oversight requirements for systemically important payment systems

(ECB/2014/28)

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)<sup>(1)</sup>.
- (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-IOSCO principles’)<sup>(2)</sup>, 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

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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 CPSS-IOSCO principles acknowledge that there are exceptional cases where they are applied differently to payment systems operated by central banks due to requirements laid down in relevant law, regulation, or policy. The Eurosystem has public policy objectives, responsibilities and an institutional set-up defined in the Treaty and the Statute of the ESCB meaning that Eurosystem SIPS may be exempted from certain requirements under this Regulation. Against this background, Eurosystem SIPS should be exempted from specific requirements on governance, wind-down plans, equity and liquid assets, collateral and investment risks, which cover the same areas as the respective requirements formally adopted by the Governing Council. These exemptions are specified in several provisions of the Regulation.
- (8) Under Guideline ECB/2012/27 of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2)<sup>(3)</sup> 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.
- (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 systems<sup>(4)</sup>. 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

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- 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) Provisions of this Regulation requiring a SIPS operator to collect, process and transmit data should be without prejudice to any applicable rules on protection of data of participants or customers.
- (15) 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.
- (16) The ECB has recourse to the national central banks to carry out ESCB tasks to the extent deemed possible and appropriate.
- (17) The requirements laid down in this Regulation are proportionate to the specific risks and exposures of SIPS.
- (18) The possibility for competent authorities to request corrective measures to remedy or avoid repetition of non-compliance with this Regulation, and the possibility for the ECB to impose effective, proportionate and dissuasive sanctions for infringements of this Regulation are essential elements in implementing the CPSS-IOSCO principles to the fullest extent allowed under the Treaty and the Statute of the ESCB.
- (19) 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.
- 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, including establishment by means of a branch, through which the system is operated; 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;

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- (ii) [<sup>F1</sup>the total euro-denominated payments processed represent at least one of the following:
  - 15 % of the total volume of euro-denominated payments in the Union,
  - 5 % of the total volume of euro-denominated cross-border payments in the Union,
  - a market share of 75 % of the 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.

[<sup>F2</sup>An identification exercise shall be performed on an annual basis.]

[<sup>F23a</sup> A decision adopted under paragraph 2 shall remain in force until it has been repealed. Verification reviews of payment systems that have been identified as SIPS shall be carried out on an annual basis in order to verify that they continue to meet the criteria on the basis of which such identification was made.]

[<sup>F14</sup> SIPS operators shall cooperate, on a continuous basis, with the competent authority, and ensure compliance of the SIPS they operate with the requirements set out in Articles 3 to 21, including in terms of the overall effectiveness of their rules, procedures, processes and frameworks. SIPS operators shall further cooperate with the competent authority to facilitate the broader objective of promoting the smooth operation of payment systems at systemic level.]

#### Textual Amendments

- F1** Substituted by [Regulation \(EU\) 2017/2094 of the European Central Bank of 3 November 2017 amending Regulation \(EU\) No 795/2014 on oversight requirements for systemically important payment systems \(ECB/2017/32\)](#).
- F2** Inserted by [Regulation \(EU\) 2017/2094 of the European Central Bank of 3 November 2017 amending Regulation \(EU\) No 795/2014 on oversight requirements for systemically important payment systems \(ECB/2017/32\)](#).

## 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) ‘transfer order’ has the same meaning as defined in Article 2(i) first indent of Directive 98/26/EC;
- (3) ‘systemic risk’ means the risk of a participant or the SIPS operator not meeting their respective obligations in a SIPS will cause other participants and/or the SIPS operator

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- 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;
- (4) ‘SIPS operator’ means the legal entity legally responsible for operating a SIPS;
  - (5) ‘competent authority’ means the Eurosystem central bank with primary oversight responsibility identified as such pursuant to Article 1(2);
  - (6) ‘Eurosystem SIPS’ means SIPS owned and operated by a Eurosystem central bank;
  - (7) ‘legal risk’ means the risk arising from the application of law or regulation, usually resulting in a loss;
  - (8) ‘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;
  - (9) ‘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;
  - (10) ‘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;
  - (11) ‘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;
  - (12) ‘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;
  - (13) ‘market risk’ means the risk of losses, in both on- and off-balance sheet positions, arising from movements in market prices;
  - (14) [<sup>F1</sup>‘deferred net settlement system’ (DNS system) means a system in relation to which settlement in central bank money takes place on a net basis at the end of a predefined settlement cycle, e.g. at the end of, or during, a business day;]
  - (15) ‘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;
  - (16) ‘cross-border payment’ means a payment between participants established in different countries;
  - (17) ‘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;
  - (18) [<sup>F1</sup>‘direct participant’ means a legal entity that has a contractual relationship with a SIPS operator, is bound by the relevant SIPS's rules, is allowed to send transfer orders to that system and is capable of receiving transfer orders from it;]
  - (18a) [<sup>F2</sup>‘indirect participant’ means a legal entity that does not have direct access to a SIPS's services and is typically not directly bound by the relevant SIPS's rules,