



EBA CLEARING

Mr. William C. Dudley
Chair, the Committee on Payment and Settlement Systems

Mr. Masamichi Kono
Chair of the Technical Committee of the International
Organization of Securities Commissions

By e-mail

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29th July 2011

Subject : Consultative report on principles for financial market infrastructures

Dear Sirs,

It is my pleasure to send you herewith the comments of EBA CLEARING to the consultative report on principles for financial market infrastructures.

I wish take this opportunity to express my appreciation for this important work on the matter of enhancing the capability of all FMIs to withstand adverse market conditions and financial shocks.

I may hope that our observations and suggestions contribute to this objective and remain,

Yours sincerely,

Gilbert Lichter
CEO



EBA CLEARING comments on the consultative report on principles for financial market infrastructures and the accompanying cover note of March 2011 by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organisation of Securities Commissions (IOSCO)

29 July 2011



Introduction

1. EBA CLEARING welcomes the invitation by the CPSS and IOSCO to reply to the consultation on the CPSS-IOSCO principles for financial market infrastructures.

2. 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.

3. 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. At current there are 67 EURO1 participants.¹

4. 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).

5. The systems for which EBA CLEARING acts as system operator are all truly pan-european. Participation is from an office located in the European Union, respectively SEPA.

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

7. Reference is made to www.ebaclearing.eu for general information on EBA CLEARING and the systems it operates. A descriptive overview of the EURO1, STEP1 and STEP2 systems is also foreseen to be published in the Red Book of the BIS for 2010.

8. The present reply to the consultation is in 3 parts.

9. In the first part, a reply to the questions and points raised in the cover note to the report is provided from the viewpoint of the fund transfer systems operated by EBA CLEARING.

10. In the second part, high level input is provided on a number of points which raise concerns at the level of the proposed Principles.

11. The third part of the present reply contains comments on a per principle basis. Specific attention is drawn to the comment on Principle 8 which is considered of high importance from the viewpoint of the EURO1 system.

¹ Since 2001, the EURO1 technical platform is also used to enable direct sending and receiving of payment messages between banks that are not participants in EURO1 but participate in the STEP1 payment arrangement which relies on fund transfers in EURO1.



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

12. 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:

1. Comments solicited on Principles 4 and 7:

The current regime providing for a cover one minimum requirement for ensuring timely completion of settlement (see in particular current Core Principle V of the CPSIPS) should, for multilateral net payment systems, be maintained by way of minimum standard.

13. The proposed Principles bring an important change to the current requirements in that the cover one minimum requirement would apply to a participant and its affiliates. It is understood that the risk that a participant fails for liquidity or credit risk reasons may, depending on the case at hand, spread rapidly to the participant's affiliates. This would however not be the case should a failure be due to reasons of an operational or technical nature. Further, from a payment system point of view, the liquidity (or credit) risk which seeks to be addressed would only relate to such risk actually materialising on the same business day.²

14. An additional criterion according to which the inability to timely settle of two totally 'independent' participants with the two largest possible debit positions would need to be covered is not believed to correspond to a scenario that would be considered as within normal market constraints. We believe that, for payment systems, a cover one minimum requirement for liquidity risk (and credit risk) which is coupled with an obligation to hold readily available liquid assets (say collateral) is a sufficient response -- from the viewpoint of the core minimum authoritative standards (for timely settlement) -- to cover default situations in any and all cases.

15. Experience has shown that risks usually materialise in an unprecedented manner. Setting a number on the defaults that must be covered in all cases, both from a liquidity (and credit) risk point of view, might not fit a crisis situation as it actually arises or materialises. By way of example, one may refer to types of risks

² E.g., in the case of EURO1, payments are settled with finality (irrevocable and unconditional fund transfer) in real time on a continuous basis. Certainty of settlement only concerns the net interbank exposure of each participant, which is in an amount within binding intra-day limits, towards the community of all other participants. A cash collateral pool held at the ECB serves to ensure timely settlement, within the normal constraints of the money markets, in the event of the failure of the participant with the single largest possible debit position. In addition, the cash collateral pool is also used in the event of multiple failures not exceeding the amount of the collateral pool. In the event of multiple failures for an amount higher than the collateral pool, binding loss sharing obligations ensure provision of liquidity to ensure settlement. A cover one or cover two minimum requirement as referred to in the cover note to the consultative report thus only relates to ensuring timely settlement within the normal constraints of the money markets. It may be noted that a new requirement as seems to be embedded in the Principles according to which the regime under the current Core Principle V is to be enlarged to apply to a participant and its affiliates, would, in the case of EURO1 bring about a serious impact on the manner of constituting collateral shares (and the related costs for the participants concerned), or, alternatively, on the capability of (affiliated) individual participants to maintain their participant status and the resulting liquidity for making payments in EURO1.

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such as behavioural risk and country originated risks, which are unrelated to a number of defaults and are likely not to be capable of being addressed by a cover 'n' minimum requirement.

16. In a multilateral net system which provides for risk controls allowing to timely reduce a participant's credit limits, based on the risk monitoring by the other participants, and thereby reducing the maximum possible debit position for such affected participant, the size of the readily available liquid assets (collateral) held to ensure timely settlement will allow to cover multiple failures of participants in relation to whom risk assessment has given rise to reduction of limits.³

17. A cover two minimum requirement which would mean doubling the size of the collateral pool (abstraction being made from the impact of the reference to a participant and its affiliates) is not supported.

18. By way of conclusion, from the viewpoint of EURO1, EBA CLEARING strongly advocates to maintain the requirement as it currently applies for multilateral net systems, unaltered.

19. From the viewpoint of a retail payment system such as STEP2, application of a cover one or cover two minimum requirement is believed to have a serious impact including on the design (and related costs) for a mass retail payment system. Reference is made to the comments in Part 2 regarding the type of systems the Principles wish to address, now or in the future.

2. Comments solicited on Principle 15:

A qualitative requirement for covering general business risk would be a preferred approach for a system operator of a fund transfer system without a central counterparty.

20. In the case of a payment system without a central counterparty, giving rise to rights and obligations resulting from the sending and receiving of payment messages on the part of the participants in the system only, and ensuring that at no times the system operator holds any funds (for settlement, collateral or otherwise) nor incurs any payment obligations or rights in connection with or arising from sending and receiving of payment messages in the system, the question may arise whether proportionality would not suggest an approach to allow for different means to cover general business risk, including from the perspective of Principle 21 on efficiency and effectiveness.

21. EBA CLEARING believes, in its capacity as system operator of EURO1, STEP1 and STEP2, that general business risk could be more efficiently covered through a combination of various measures, such as the pricing models, liability provisions, pre-designation of different entities which can be authorised to perform critical functions.

³ E.g. In the case of EURO1, 3 failures, and as from October 2011 this number is foreseen to be 7 failures, by participants whose limits have been reduced to the minimum amount would be covered in all cases by the amount of the collateral pool (assuming the failing participants would each have a negative position equal to their maximum allowed debit position).



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22. Should a quantitative requirement to cover general business risk become part of the standards applying to system operators, room should be left for equivalent means achieving -- or exceeding -- the intended purpose of the requisite standard. For example, a rule according to which participants undertake to maintain the FMI in operation by subscribing to cover the full operating costs of the system operator in all cases would be considered to fully respond to maintaining quantitative means to cover general business risk.

23. By way of conclusion, EBA CLEARING believes sufficient flexibility should be built in to allow for different types of solutions, thereby also taking into account that a stand-alone 'fixed' requirement for creating a 'reserve' funded by equity in an amount equal to between six and twelve months of operating expenses would yield an additional ongoing fixed cost for the operation of payment systems.

3. Comments solicited on Principles 18 to 20:

There is a need for a separate section addressing links between payment systems. Settlement risks and participation in the settlement obligations of a payment system should be restricted to credit institutions.

24. The text of the Principles on links as currently drafted lacks clarity as regards interpretation and implementation thereof to payment systems. EBA CLEARING would welcome, in particular for reasons of transparency and 'legal certainty', that the proposed Principles are complemented with a specific section addressing payment systems.⁴

25. Interoperability between payment systems, to the extent relevant, should be placed at the level of the use of (the same) technical standards. EBA CLEARING believes that requirements beyond technical interoperability should be avoided including in particular for reasons of legal soundness and risk considerations (e.g. in particular irrevocability and finality of payments).

26. From the viewpoint of fund transfer systems, and in line with the provisions of the Settlement Finality Directive (as apply for the EEA), settlement risk and settlement obligations should be and remain with credit institutions. Further, in the case of linked arrangements, settlement should occur in one single system.

4. Input solicited on the timing for implementing changes to comply with the Principles:

A period of 2 years should be foreseen to allow EBA CLEARING as system operator to prepare for compliance with the Principles for FMI's once adopted.

27. Identification of the exact measures to be taken to achieve compliance with new requirements deriving from the Principles and changes to requirements that are part of the current CPSIPS and (Eurosystem) oversight framework, will require that exact details on the implementation and interpretation of the Principles are

⁴ It is assumed that the Principles do not intend to lead to changes to (national law provisions implementing) the Settlement Finality Directive.



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available. On the basis of a reading of the consultative report, EBA CLEARING would estimate that impacts on the organisation (functions, board processes, resources, governance) would attract an implementation program over 2 to 3 annual governance cycles.

28. In case the implementation of certain requirements would lead to an impact at the level of elements of design of the EURO1 system, EBA CLEARING would foresee a period of up to 2 years for implementation. If and when STEP2 would be included in the scope of addressed systems by the Principles, a longer period might be required in particular if this would lead to an impact on the basic design of STEP2.

PART 2 - High level comments on major points and concerns regarding the proposed Principles

29. EBA CLEARING would wish to convey a number of general points which will need clarification, in particular from the viewpoint of the implementation and actual application of the Principles. We believe it might be of benefit to share these points with the CPSS and IOSCO in the context of the consultative report, the more since the publication of an assessment methodology to accompany the Principles is foreseen as part of the next steps in the process.

1. Comments on anticipated next steps and assessment methodology:

The standards set out in the Principles should be complemented with guidance on their interpretation and implementation which is specifically addressing payment systems.

30. It is believed, that the Principles as written cannot be unequivocally applied to the specificities of a payment system for fund transfers such as a multilateral net system without a central counterparty.⁵ From the perspective of a fund transfer system, the CPSIPS provided greater clarity on the exact meaning of the requirements, as further detailed in Part 2 of the publication of 2001.

31. As was done for the CPSIPS⁶, EBA CLEARING very strongly advocates that the Principles are completed with specific guidance on the interpretation and implementation thereof dedicated to payment systems in particular to mitigate the risk for uncertainty on the part of the FMI including its participants on the exact requirements to be fulfilled in relation to a fund transfer system. Such a setting might lead to combining the benefit of greater consistency in the oversight and regulation of FMI's worldwide with the benefit of clarity and transparency regarding the requirements to be met by a supervised / overseen FMI.

32. Absent specific guidance on the interpretation and implementation of the Principles to payment systems, many implementation and interpretation questions and issues risk to arise, and it seems necessary both for the overseer / supervisor / regulator and the overseen / supervised / regulated FMI that the framework is fully transparent and allowing, in particular for the FMI and its participants, full understanding of the requirements.

33. Where the publication of an assessment methodology is foreseen, EBA CLEARING believes that a list of key questions in itself could not provide the guidance on the exact meaning and scope of the requirements the fulfillment whereof is verified through such list of questions. In the experience of EBA

⁵ E.g.: if one would read the proposed Principles and not be familiar with the current CP's and their interpretation and implementation, it would be quite difficult to understand the intended scope of certain requirements in particular for systems where there is no central counterparty and where there are no rights or obligations resulting from the sending and receiving of payment messages / orders on the part of the system operator. Different backgrounds for different types of existing systems may also lead to very different readings of the Principles. Given that it is foreseen that the CPSIPS will be replaced by the Principles, a setting where guidance provided in the CPSIPS would continue to apply would not fit with the new structuring and new elements of the 'new' Principles.

⁶ See in particular Part 2 of the Report on Core Principles for Systemically Important Payment Systems.

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CLEARING, the guidance provided by the CPSIPS and by the CPSS combined with the oversight framework of the Eurosystem as documented and as applied in practice have proven to be a necessary reference to enable identification of the requirements and / or expectations applying to LVPS.

34. In relation to the assessment methodology as such, EBA CLEARING would be keen to understand whether the assessment methodology will be common for FMI's (of the same type) worldwide and result from the final report, or whether the Eurosystem would foresee or is empowered to adopt a separate assessment methodology. In any event, EBA CLEARING believes it is of the utmost importance for EBA CLEARING as system operator and for all participants in its payment systems that a specific assessment methodology is prepared for payment systems. Further, EBA CLEARING would strongly recommend an assessment methodology recognising the differences between RTGS systems and LVPS operating on a net basis.

2. Comment on certain requirements for an FMI of a system without a central counterparty:

Monitoring of the risks of participants vis-à-vis other participants or (bank) customers should remain with the participants.

35. The focus on financial market infrastructures as such is believed not to fit very well the different designs of fund transfer systems. Even though the definition of an FMI refers to a multilateral system among participating financial institutions including the operator of the system, and does not exclude multilateral systems without a central counterparty, the Principles seem to be drafted such that all requirements are addressed to and must be fulfilled by the 'system operator' of a payment system. In the case of systems without a central counterparty, this may lead to certain requirements which do not fit – or even could be counteracting -- the intent of the participants in the system.

36. EBA CLEARING would have a major concern if the Principles would lead to an interposition of a system operator (in a system without a central counterparty) in the credit risk monitoring by banks participating in a system on other banks. In addition, it might be doubtful which actions could be usefully taken by a system operator on the basis of specific tasks to monitor creditworthiness of participants.⁷

37. A similar point applies in relation to monitoring of risks relating to indirect participants. EBA CLEARING wishes to point out in particular the delicacy of any interference by an FMI and of the proposed duty of the board to assess the risks in

⁷ A requirement for ongoing monitoring of the financial criteria applying to participants is understood to be part of the requirements put on a FMI. In the case of EURO1, limit setting and tools to manage the credit risk of the participants is built such that those who can incur the credit risk (i.e. the participants) can monitor the same. If the requirement for monitoring of financial criteria would be interpreted such that it adds a requirement for EBA CLEARING as system operator to monitor the creditworthiness of the participants (in casu own funds and credit rating), it is totally unclear what the intended processes are -- thereby taking into account that EBA CLEARING could not be equipped in the same manner as its participants -- and what the intended purpose is. In particular, it is unclear which actions EBA CLEARING would have to take -- beyond the tools available to the participants -- if there would be a deterioration of the financial situation of a participant in particular from the viewpoint of potential disruptive effects of communications or interventions at the level of the system impacting on continued ability to send and receive payment messages casu quo to participate in the system. Further, EBA CLEARING strongly believes in the benefit of not building in a dependency on rating agencies during the lifetime of participation by a bank in a payment system, other than at the level of the credit risk monitoring tools each bank participating in the system chooses to apply.



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the relationship of each given direct participant and its indirect participants. Although from a legal point of view none of the systems operated by EBA CLEARING to date have indirect participants, a reading of the Principles that the requisite standards would also apply to addressable entities, would lead to an important immixture in the bilateral business and commercial relationships of participants with their customers.

38. Would the Principles be called to apply to retail payment systems, EBA CLEARING would argue that it could not be intended that it must perform risk assessments in relation to all entities reachable in a mass payment system.

3. Comment on requirements relating to the organisation of an FMI:

The detailed implementation of requirements relating to organisational aspects should recognise different risk profiles of systems and FMI's.

39. While it is understood that the draft Principles for FMI's are partially inspired by lessons learned from the financial crisis, it is suggested that awareness and controlling of risks may be covered in an efficient and sufficient manner through different means. The benefit of the formal organisational, procedural and administrative requirements stemming from the proposed Principles as currently drafted should be weighed against the impact thereof on efficiency and costs, not only at the level of the system operator but also at the level of the actual running of a payment system and the cost of a payment.

40. EBA CLEARING fully shares the objectives of the Principles. To allow for efficient compliance with effective requirements, in particular those impacting on an FMI as an organisation and on the implementation of processes, EBA CLEARING believes that the spelling out of the implementation details should focus on the intended effect of the requirements thereby recognising and being supportive to the different profiles of systems (e.g. fund transfer systems) and of FMI's (e.g. FMI without a central counterparty). In addition, potential duplication of efforts at the level of the various actors and entities involved or concerned should be minimised to the maximum extent possible.

4. Comment on intended scope of application of the Principles:

Will (all or part of) the Principles apply to retail payment systems?

41. There is a need to understand whether the Principles will be called to apply to retail payment systems.

42. In case systemically important retail payment systems would fall within the scope of the Principles, there is a need to understand whether the Principles would apply in full and/or whether a different degree of compliance would be applied in line with the oversight policy for retail payment systems (RPS) as is currently in place for the Eurosystem. In case of different degrees of compliance for RPS as opposed to LVPS, EBA CLEARING would welcome that the expected compliance levels would be documented.



5. Comment on relationship of an FMI with its overseer:

An FMI would preferably have one single overseer.

43. Clarity is needed on the question whether it could result from the new Principles that, in addition to the oversight regime as is in place for payment systems at the level of the Eurosystem, certain requirements would be implemented as part of a supervisory regime that could fall under the responsibility of a different supervisory authority. EBA CLEARING advocates for maintaining a single relationship with a single lead overseer.

44. As regards oversight of critical suppliers, it is strongly suggested that the overseer of the FMI should rely on the existing oversight or supervision of the entities in place.⁸

⁸ E.g. Oversight and supervision of TARGET2 and SWIFT.

PART 3 – Comments and concerns on a per principle basis

45. On a per Principle basis, EBA CLEARING would wish to convey the concerns and points as are in the table that follows.

Principle 1 Legal Basis	<ul style="list-style-type: none"> • Where EBA CLEARING fully supports the statements made in the report in that regard, the comment is made that private FMI's could not be responsible nor be required to overcome problems that can only be solved through legislation (e.g. elimination of zero hour rules). This is recognised in the report, but it is suggested that requirements or policy statements regarding legislative initiatives would not form part of the explanatory notes to the key considerations (and rather be moved for example to a box). More generally applied to all Principles, a similar observation applies to public policy objectives and public interest considerations which could not as such constitute requirements to be met by (private or public) FMI's but rather constitute the sources inspiring the defined requirements. • It is noted that no references are made to attachment risks, albeit – abstraction being made from measures to mitigate such risk through appropriate risk management tools – attachment risk would typically be eliminated by addressing the legal framework (e.g. for settlement systems, provisions that would be included in legislation such as the Settlement Finality Directive).
Principle 2 Governance	<ul style="list-style-type: none"> • In relation to requirements for disclosure to the (general) public, reference is made to the comments on public disclosure under Principles 13 and 23. As regards public disclosure specifically relating to governance arrangements, it is highly preferred that publication requirements stemming from Principle 2 are fully aligned to compliance with the legal, regulatory or similar frameworks as are in existence. • The requirement for independent board members should be clarified. E.g., in the case of EBA CLEARING, board members are non-executive and are appointed ad personam from among employees or officers of credit institutions which are shareholders of EBA CLEARING. Where governance policies ensure that board members are highly qualified and knowledgeable in the areas directly relevant to the business, capable and empowered to challenge management proposals, it is unclear whether distinctive requirements must be applied to independent board members as opposed to non-executive board



	<p>members. In case of a requirement for inclusion of board members that could not be officers or employees of entities that are also shareholders of an FMI, questions will arise on the processes for appointment and required qualifications, all having an impact on the corporate governance of an FMI (including e.g. the by-laws).</p> <ul style="list-style-type: none">• As regards the actual implementation of a requirement for regular reviews of the board's and its members' performance, clarification is sought on whether policies providing for an annual decision on the discharge of the board by the shareholders meeting and provisions in the by-laws allowing for the revocation of (one or more) board members by the shareholders meeting would be seen as a manner to effectively meet such requirement.• Customers are involved as stakeholders in relation to payment instruments (e.g. Payment Services Directive, SEPA payment instruments). The owners / users of a payment system must ensure the system responds to the requirements relating to the payment instruments, and payment systems are a highly specialised area for which inclusion of participants' customers in their governance arrangements should not be a requirement stemming from authoritative standards.• Where legal separation of additional services presenting a distinct risk profile from the primary function is valid in principle, it is argued that, on a case by case basis, implementation thereof should be weighed against estimated actual risks, impact on costs, organisational efficiency, etc.
Principle 3 Framework for the comprehensive management of risks	<ul style="list-style-type: none">• An effective implementation of Principle 3 to LVPS, in particular regarding the organisational and procedural aspects of the risk management function and internal audit function of an FMI, should recognise differences in function and design of FMI's and their activities.
Principle 4 Credit risk	<ul style="list-style-type: none">• Reference is made to the comments under 1) in Part 1 of this reply in relation to the maintaining of a cover one minimum requirement for multilateral net payment systems. It is thereby assumed that the wording of key consideration 3 and of the explanatory note under paragraph 3.4.5 are not meant to contradict a cover one minimum requirement where reference is made to payment systems.• Reference is made to the comments under Principle 18 in relation to credit risk monitoring.



Principle 7 Liquidity risk	<ul style="list-style-type: none">• Reference is made to the comments under 1) in Part 1 of this reply in relation to (i) the maintaining of a cover one minimum requirement for multilateral net payment systems, and (ii) the impact of the new requirement to consider both a participant and its affiliates in that regard.• Clarification on the periodicity of stress testing (monthly versus annually) would need to be provided in relation to multilateral net systems, e.g. in case readily available liquid assets consist of cash deposits at the central bank.
Principle 8 Settlement finality	<ul style="list-style-type: none">• Multilateral net payment systems providing real time intraday finality should continue to be fully recognised to constitute a valid alternative for LVPS to RTGS or multiple batch processing designs. <p>The highly valued works of the CPSS on payment systems have consistently recognised the benefit of (sound) multilateral net system designs, including in particular RTGS-equivalent systems combining certainty of settlement of payments in real time intraday and the liquidity saving benefits of a multilateral system. The Eurosystem has consistently supported multilateral net system designs for large value payment systems.</p> <p>The requirements as were developed over the years have proven to be effective to safeguard safety and efficiency of net systems meeting such requirements (such as EURO1). It may also be noted that the liquidity saving benefits of EURO1 have proven to be useful in times of markets under stress (e.g. financial crisis during 2008 and 2009).</p> <p>In the light of the terminology used by the CPSS (see for example the referenced publication in footnote 68 of the consultative report), a reference to RTGS systems might lead to uncertainty as regards the interpretation and implementation of Principle 8 for RTGS-equivalent LVPS.</p> <p>In order to avoid any interpretation, now or in the future, according to which an exception regime would apply for multilateral net payment systems providing real time intraday finality (e.g. for a major pan-european system such as EURO1), Principle 8 should recognise and specifically mention multilateral net systems that meet the required safety objectives in key consideration 2 as well as in the explanatory notes thereto (in particular under paragraphs 3.8.4 and 3.8.5) to constitute a valid alternative to RTGS or multiple batch processing for the design of LVPS.</p>



Principle 13 Participant- default rules and procedures	<ul style="list-style-type: none">• Only relevant market participants and authorities should have access to information on default rules and procedures. For payment systems in particular, a requirement according to which default rules and procedures should be fully disclosed and available to and known and understood by the FMI, its participants, relevant providers (e.g. providers of settlement services such as in case of settlement of a system at the central bank) and the relevant authorities, fully meets the needs for effective default management upon a default in a payment system. <p>Conversely, any publication of a short and descriptive overview of default rules should be left to the discretion of a private sector FMI. Where the benefit of disclosure to or availability for the general public of the default rules and procedures of a private payment system is highly questioned, attention is also drawn to potential serious risks such publication to the general public may entail, such as risks of mal-interpretation, undesired attempted claims by third parties with potentially unknown effects (see also comment under Principle 15), unjustified claims affecting resourcing needs and yielding reputational risks.</p> <ul style="list-style-type: none">• As regards public disclosure requirements, reference is also made to the comments under Principle 23.• The requirement for management discretion to implement default procedures in a flexible manner is an important issue requiring clarification as regards its interpretation and implementation. In particular, exercise of management discretion should not, and should not be interpreted to, lead to liability of the FMI and its management for 'additional systemic risks' in the market that may be perceived to have arisen from the implementation of default procedures in a flexible manner.• EBA CLEARING would welcome guidance on the flexibility to be built in by FMI's to deal with crisis situations. One could not hide the concern that central banks, at a pan-european level, have reduced their level of guidance in crisis situations for actions at the level of an FMI. The role of central banks in relation to the orderly management of a threatened or materialising exit of one or more financial institutions across the FMI's concerned is believed to be essential.• EBA CLEARING fully supports that timely communication should take place to -- and by -- regulators, supervisors and overseers including central banks in the case of (threatened) defaults. An FMI should not be put in a
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	<p>position to communicate with market participants affected by potential resulting risks other than in cases of duly and formally confirmed events of default. Untimely communication in particular on defaults that are not duly confirmed could accelerate materialisation of the risk at stake and/or aggravate the consequences thereof.</p>
Principle 15 General business risk	<ul style="list-style-type: none">• In relation to general business risk, EBA CLEARING wishes to stress -- from the viewpoint in particular of the focus of the Principles and in particular Principle 15 which is to prevent illiquidity and insolvency of an FMI --, the utmost importance that an FMI is legally ring-fenced from claims by customers of participants or other third parties. The actual text of the Principles spelling out the requirements addressed to FMI's should in our view not leave any room for interpretations that could lead to creating duties of an FMI beyond the circle of its contractual relationships, let alone potential or attempted requests or claims by customers of participants on an FMI. Of course, it is fully understood that an FMI shall need to satisfy requirements to contain risks and to provide efficient systems in line with the requisite oversight standards which may in turn be inspired by public policy objectives.• Reference is made to the comments under 2) in Part 1 of this reply in relation to the preference for qualitative requirements to cover general business risk for system operators of payment systems.• The effectiveness of the requirement for regular reporting to the overseer of capital relative to potential business risk (and the related requirement for review by the overseer of the capital plan of an FMI) may not be achieved in settings where the funding of the system operator relies on different sources.
Principle 17 Operational risk	<ul style="list-style-type: none">• In relation to the demands on the organisation and organisational set up -- and on the resources -- of an FMI, the requirements embedded in Principle 17 should take into account that the appropriateness of systems, tools, controls and procedures deployed to ensure operational reliability may, in their detailed implementation, be different for different types of systems and FMI's.• Reliance on requirements in place and stemming from the supervision / regulation of individual participants should be allowed in relation to operational risk management requirements for critical participants.



	<ul style="list-style-type: none">• Reference is made to the comments under 5) in Part 2 of this reply in relation to the preference for a setting where the overseer of an FMI relies on the oversight or supervision in place for critical service providers, in particular to minimise potential duplication of effort and to reduce the burden on the FMI and the relevant authorities.
Principle 18 Access and participation requirements	<ul style="list-style-type: none">• EBA CLEARING would be seriously concerned if the Principles would lead to the result that changes in the own funds or rating of a participant in a LVPS (e.g. EURO1) would attract an interposition of the system operator in the monitoring of the creditworthiness of such participant by the other participants in the system. Reference is made to the concerns raised in the comments under 2) in Part 2 above (see in particular under number 36 and footnote 7).• For fund transfer systems, participation in a payment system's settlement arrangements and settlement risk should be restricted to banks that are subject to effective banking supervision and regulation.• The interpretation of the meaning of the interest of the broader financial markets should be spelled out as part of the guidance on interpretation and implementation of the Principles to fund transfer systems.• Where disclosure to relevant market participants and authorities of procedures relating to suspension and exit of a participant is fully supported, it is believed that a requirement for public disclosure should be avoided. Reference is made to the first comment under Principle 13 in that connection.
Principle 19 Tiered participation arrangements	<ul style="list-style-type: none">• The identification, understanding and management of risks arising in the bilateral relationship between a (direct) participant and its indirect participants should be put at the level of the supervisor / regulator of the institution that participates as direct participant in one or more systems.• Other than at the level of the system's rules and procedures, an FMI should not be put in a position to be required to manage and assess risks arising from indirect participants. The responsibilities of the board in relation to the management of risks arising from tiered participation arrangements should be more clearly confined to avoid delicate situations.• A system operator including its board should not be put in a position to be required to handle confidential and other sensitive commercial information pertaining to the bilateral



	<p>relationship between a direct participant and the indirect participants it serves.</p> <ul style="list-style-type: none">• It is questionable which actions could be taken by a system operator vis-à-vis direct participants to the extent these interfere with the commercial relationship and risk assessment and management of a direct participant with its customers.
Principle 20 FMI links	<ul style="list-style-type: none">• Comments on Principle 20 are included in the comments solicited on access and interoperability in the cover note to the consultative report. Reference is made to the comments under 3) in Part 1 of this reply.
Principle 21 Efficiency and effectiveness	<ul style="list-style-type: none">• Although it is recognised that there may be different ways for an FMI to meet a particular principle, the Principles do contain rather detailed formal, organisational, procedural and administrative requirements. The benefit and effectiveness of those should be weighed against the objective of efficiency of each given FMI.
Principle 23 Disclosure of rules and key procedures	<ul style="list-style-type: none">• EBA CLEARING fully supports disclosure of rules and procedures to current and prospective participants in a payment system and to relevant authorities in a manner allowing that information is readily available and easily accessible.• Public disclosure of rules and procedures beyond the level of general information is believed not to give rise to justified benefits. Any publication to the general public of a system's rules and procedures should be left to the discretion of a (private sector) FMI, exception being made for public disclosure requirements stemming from the law. The know-how, business interests, investments, commercially or otherwise sensitive information and safety measures of a privately owned FMI and its owners / participants should not be available in the public domain nor be accessible "for free" to competitors or other third parties with good or malicious intentions (e.g. fraud, cyber attacks, undesired use for unjustified claims, copying of innovative elements impacting on competitive advantage, impacts on safety of the operational set up, etc.).• Serious legal interpretation risks may arise from requirements for paraphrasing, other than for general information purposes, a system's rules and procedures in plain language.



	<ul style="list-style-type: none">• Pricing of participation in a payment system is to be made available to current and prospective participants. A private sector FMI providing services to financial institutions should not be required to publish its pricing in the public domain. Publication of fee schedules may in given cases give rise to unwanted practices by other market participants including competitors. The overseer of a payment system can perform the requisite checks to assess compliance of an FMI with Principle 21 on efficiency and effectiveness.• EBA CLEARING is happy with the current practice by its overseer regarding publication of conclusions of oversight assessments and the right of the overseer to confirm that it has no objection to the (level of) information that is published. A similar approach should be implemented for publications of self-assessments by an FMI against compliance with the Principles.
Issue 25 Communication in case of defaults	<ul style="list-style-type: none">• Outside of the context of the Principles, EBA CLEARING wishes to draw the attention to risks resulting from poor or untimely communication of the occurrence of a credit event affecting a financial institution participating in a system. In the case of a bankruptcy or similar event affecting a participant in a system, the information flows of the Settlement Finality Directive have proven not to work efficiently, and in addition, these only apply within the EU/EEA. EBA CLEARING would see benefit in a setting where the central banks would be the point of contact for information on the occurrence of a bankruptcy or similar event by the relevant (judicial) authorities, coupled with a process to simultaneously inform, in a pushed manner, all FMI's concerned globally. Ideally, the moment of bankruptcy for the purposes of participation in a payment system should be tied to the time of such information.

46. EBA CLEARING would much appreciate a consultation on the guidance for interpretation and implementation of the Principles, whether in the form of a dedicated part for payment systems as is the strong preference of EBA CLEARING or in the form of an assessment methodology for payment systems. EBA CLEARING would see much benefit in an ongoing dialogue with its overseer in relation to the intended and actual implementation of the Principles.