

23.10.2002

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Letter

To: ECB, Secretariat

From: Dr. Herbert Pichler, Bundessparte Bank und Versicherung der Wirtschaftskammer
Österreich

Date: 10.10.2002

Subject: **BSBV 145/2002, Oversight standards for euro retail payment systems – public
consultation**

Dear Sir or Madam,

In our capacity representing the interests of the entire Austrian banking sector, we welcome the opportunity provided by the consultation procedure to express our views on the document entitled “Oversight standards for euro retail payment systems” at an early stage in the process:

1. Basic considerations:

- In principle, efficient oversight of payment systems, aimed at improving the safety with which payments can be made, is a positive thing. Since this can mean a considerable drain on resources, however, the listed Core Principles should apply in full only to payment systems which have been agreed to be systemically important, i.e. they should be adjusted to the significance of the different systems. Since no cross-border retail payment system is yet deemed so important that it would have to adhere to the oversight standards for euro retail payment systems, the ECB’s first step should be to clearly define which international payment systems should be subject to the standards. Once the international payment systems have thus been defined on the basis of objective criteria, the ECB should, in collaboration with the national central banks and credit institutions, establish the reach of oversight, i.e. the principles and standards for system providers.
- In particular, objectively applicable criteria must be established so that competitive disadvantages are not created vis-à-vis the reach of oversight, or because of unequal reporting requirements or different standards, and so that overseers do not interpret the criteria differently, which could ultimately lead to market distortions.
- Moreover, exact definitions of a “system provider” and “system participant” should be established, although it is clearly not possible for this to cover end-users.

- These definitions must, furthermore, be applicable to all payment system participants, irrespective of whether they have credit institution status – especially if non-banks are using payment system instruments and facilities to enter payments into the system on a commercial basis.

The oversight principles must apply to all providers and participants offering/using the same services. Objectively applicable criteria are needed for this.

On the basis of what criteria is a system “important”?

What are “certain types of euro retail payment systems”?

What must a system’s volume of transactions be for it to be termed a “retail payment system”?

- The publication of a list by each central bank does not constitute a sufficient or objectively applied criterion in this respect – especially when, for the notification of systems under the settlement finality directive, it is accepted “that the notifying authority may take account of the national circumstances when deciding to designate a system as such.”

2. On the Core Principles in detail

In general, each of the Core Principles should be examined to determine whether it is basically feasible and the commitment of resources it would involve, and should be formulated in such a way that competitive distortions, for example through varying implementation, are avoided.

In any case the examination should be limited to the safety of the system.

I) Legal basis:

In this area, the principal aim should be to harmonise the legal bases (if possible also already in the accession countries) in order to improve legal certainty.

In the eyes of a provider of a non-systemically important retail payment system, it is probably enough that the individual legal situations are checked. The resulting risk must be assessed.

II) Understanding financial risks:

- Informing all participants in detail of all possible financial risks would place an excessive drain on resources.
- The obligation to provide information should instead be restricted to financial risks which are relevant in practice. Most of this information is already contained in the regulations of the systems.

VII) Security and operational reliability:

How well a system is protected against failure is certainly relevant. However, realistic requirements should be drawn up with the designated system providers. In principle, the documentation on the operation of the system should suffice.

VIII) Efficiency:

We support the fundamental approach that oversight is for ensuring the safety of payment systems. Efficiency in the sense of economic management cannot be the purpose of oversight: the question of efficiency should be left to the market. Where this paper talks of the efficiency of the economy, it should at any rate include the financial sector.

The ECB must ensure that free market principles are respected and the conditions are created for free competition. It should also be pointed out here that the national retail payment systems do not always comply with international standards (SWIFT, BIC, IBAN, IPI). It would in any case be better to wait for the results of the SEPA discussions in the EPC before implementing these standards in the national retail payments systems.

IX) Access criteria:

For existing national systems it should be enough to define the participants using objective criteria.

X) Governance:

The aim cannot be to move towards checking the efficiency of organisational structures.

3. Additional basic principles

An extension of the basic principles should (if only because of the costs involved) be rejected.

4. Notification of retail payment systems under the settlement finality directive

“The SFD adds legal certainty with respect to the execution of transfer orders and netting in the event of insolvency proceedings against a participant.”

This statement is not quite correct since it refers to a directive – which has been transposed in sometimes varying ways into national law.

Different treatment in different countries (including of notified systems) means that – as mentioned above – further competitive distortions are possible. This idea should therefore also be rejected.

5. Notes on the questions and difficulties

A fundamental consideration is that before a catalogue of requirements for those obliged to provide information can be drawn up, the systems obliged to provide information must be defined.

We request that these points, which we have also communicated to the Österreichische Nationalbank, be taken into consideration.