

European Central Bank,
Secretariat Division,
Kaiserstrasse 29,
D-60311 Frankfurt am Main, Germany

Via e-mail: ecb.secretariat@ecb.int

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EACHA reaction to the Consultation ECB on “Draft Oversight Expectations on Links between Retail Payment Systems”

Dear Sirs,

The EACHA (European Automated Clearing House Association) has taken note of the ECB publication “Draft Oversight Expectations on Links between Retail Payments Systems”. The subject matter of this paper concerns a key element of the EACHA Interoperability Framework, which is being used extensively by EACHA members. We acknowledge that well-structured oversight on the functioning of links is important as part of the overall industry oversight and governance. EACHA therefore welcomes the opportunity to provide comments in this consultation round.

Our comments are organized in two parts:

- First, answers are provided to the five questions posed by the ECB in the preamble of the paper.
- Second, more detailed comments are provided on the paper, with some suggestions for alternative text or clarification.

We trust our comments will support and contribute to the establishment of clear oversight criteria and standards and foster interoperability by efficient and effective usage of links for all participants in the retail payments industry.

We have taken care to be clear and unambiguous in our comments, but remain of course available to help clarify any remaining questions.

Yours sincerely



F. Bär

EACHA Secretary General

EACHA comments - Part 1 – answers to ECB questions in the preamble.

Question 1:

Taking into account SEPA, how do you see the evolution of retail clearing infrastructures in Europe and the role of links between retail payment systems?

Answer 1:

Links between retail clearing infrastructures perform a key role in providing the interoperability required by law (EU Regulation 260/2012, “the SEPA-Regulation”); and expected by the Eurosystem (7th Progress report). The existence of links between the retail payments systems that offer clearing and settlement services is a necessary prerequisite to achieve reachability for PSPs.

The role of links should be increasing in the coming years, as migration to SEPA would upturn, and may be accelerated by some CSM’s taking the decision to start additional interoperability projects. The availability of a common standard (e.g. the EACHA Interoperability Framework) should foster efficient deployment of links between retail payment systems.

Question 2:

Are the definitions of links and the scope of application of oversight expectations clearly defined in the document?

Answer 2:

The document on oversight expectations for links between retail payment systems clearly defines the links and the scope of application of oversight expectations. As a general remark, the Oversight expectations for links between retail payment systems should be consistent with the SEPA Regulation. The SEPA Regulation, in recital 10, and article 4.2 requires that operators of a retail payment system ensure technical interoperability with other retail payment systems within the Union, and that they shall not adopt business rules that restrict interoperability. The Oversight expectations should thus require retail payment systems to respect the legal framework from the SEPA Regulation. In order for retail payments systems to be aware of the public policies applicable to them, the Oversight expectations should be consistent with the Eurosystem’s 7th Progress Report, still in place.

Question 3:

Do oversight expectations address all the risks and efficiency aspects inherent in link arrangements?

Answer 3:

The document addresses all the risk aspects inherent in link arrangements. It currently does not cover sufficiently the aspect of efficiency of links for RPS users or the aspect of business rules that may restrict interoperability. It also does not make a distinction between links that initiate settlement in central bank money, versus those that settle in commercial bank money.

Question 4:

What is your opinion on the risks and efficiency of indirect and relayed links between retail payment systems in comparison with direct links? Do the proposed expectations appropriately address these risks? Have you established any indirect or relayed links with another retail payment system?

Answer 4:

A relayed link provides efficiency as it allows CSM's to reach certain communities through another CSM's link if the traffic with that particular community is too small to pay off for the cost to establish a direct link with that CSM. The level of risk related to relayed links is exactly the same as in the case of direct links due to the fact that the responsibility regime should be clearly established bilaterally between the relevant CSMs. The only restriction of relayed links is related to the fact that due to operation constraints the cut off times to send transactions are slightly less extensive than in the case of direct links. This same restriction applies to indirect links.

Question 5:

Which areas of these expectations could be subject to grading according to the importance of the link (proportionality)?

Answer 5:

Although the document is appropriate as links between retail payment systems should be subject to oversight, it cannot be denied that the traffic processed through these links is extremely limited. In contrast, transactions processed "on us", using correspondent banking, within a bank or a group of banks or using bilateral exchange of payments accounts for more than a half of payments processed in SEPA, but they are not subject to the strict oversight policy applied to CSM's. A level playing field for payments processing, irrespective of the procedure used to channel transactions would be essential to provide the necessary incentives to PSPs to process payment instruments through the most efficient way allocating risk properly. We fear that putting too much pressure on the oversight of links and on the CSM's traffic would incentive the use of less protected and riskier procedures to route SEPA transactions.

EACHA comments - Part 2 – detailed comments on the paper.

Overall, amendments to the text could be made with some main objectives in mind:

- (1) Ensure that retail payments systems work within a clear regulatory framework, with internal consistency between requirements set by EU law and by Eurosystem oversight.
- (2) Ensure that Eurosystem oversight expectations are oriented toward achieving the SEPA
- (3) Ensure high level of transparency about access rules for usage of links
- (4) Ensure practicality of enforcement and other considerations

Regarding the first objective, internal consistency between EU law and Eurosystem oversight:

- The Introduction (3rd alinea) mentions that NCBs will, as part of their oversight function, assess the compliance of an RPS for any links it may have. The text could be expanded slightly to mention that the oversight function will be also performed taking into account the compliance with the interoperability requirement in the SEPA Regulation. NCB and Eurosystem oversight may need to work together in the case of links between an RPS overseen by a NCB and a RPS overseen by the Eurosystem.
- In the Definition section, consistency would be strengthened by adding for the Indirect link, that this kind of link should not impose on a PSP an obligation of participation in both RPSs concerned. Such obligation should be considered as a business rule restricting interoperability. i.e. in violation of SEPA Regulation Recital 10 and Article 4.2.
- Expectation 4, key issue 3, states that payments exchanged over a link are expected to “...be settled promptly, *preferably on an intraday basis*”. Thus formulated, this expectation goes slightly beyond what is required by the PSD. We do believe that market practice will evolve in that direction, but perhaps this expectation should be held in line with PSD. In addition for relayed links such expectation could unlikely be respected.

Regarding the second objective

- In the Introduction, where it is stated (alinea 3) as a goal that the risks are properly managed, it could be added as a policy goal that the SEPA is achieved; to put the operation of links in their proper perspective, of being a necessary mechanism to create reachability and deliver interoperability.

Regarding the third objective, transparency of access rules:

- Expectation 5. We fully support the expectation of Public disclosure of access criteria for setting up a link.
- Expectation 5, it might be added that *as a minimum* RPSs should always define access criteria for Direct links.
- Expectation 5 requires that “From an efficiency viewpoint, access criteria should be based on the business case”. We believe that *even in the absence of a business case as seen by an*

individual RPS, RPSs should accept requests for links from other RPSs provided the requesting RPS bear the relevant cost, and provided those links cannot cause disruption in terms of risk management (this principle is stated in the Eurosystem Terms of Reference).

Regarding the fourth objective, practicality of enforcement and other considerations:

- Expectation 5, requires RPS to make “any reasonable effort to assess whether any linked RPS have the requisite operational capacity...” etc. While theoretically acceptable, this requirement would seem hardly applicable and enforceable in practice. This is due to the absence of a harmonised European legal framework with the result that the assessment might not be based on objective “references”.
- Expectation 6 refers to links meeting the needs of its participants and the market, and links being designed to serve the users’ needs; and that it be avoided to build links which are not in line with its participants’ cross border activities. The formulations in this section could unduly limit RPSs entrepreneurial freedom, or reduce flexibility of adapting service to developments in the markets that an RPS serves. It might result in “freezing” the market contrary to the Eurosystem’s view on the evolution towards SEPA. Or it might result in individual PSPs being forced into double participation in retail payment systems. We think the overall goal of achieving the SEPA will be best served by allowing a flexible adaptation of the retail payments systems services, including the appropriate level of links. Therefore we would suggest that the expectations in this section are not strictly or immediately tied to the current existing market situation or to their participants’ current existing business.
- Expectation 7, issue 4. RPS corporate governance mechanisms exist as safeguard that shareholder and stakeholder interests are taken into account when decisions are taken to evolve the services of the RPS. It should not necessarily be required to always consult stakeholders prior to the establishment of a link. In any case the proportionality principle would apply to this expectation.
- Expectation 8, key issue 1: it could be added as a requirement that the RPS establishing an indirect or relayed link should verify that the link does not entail that its own participants also participate in the linked RPS.

As a final observation, EACHA believes that the EACHA Interoperability Framework, by its design, addresses and mitigates many of the risks that are listed in the Oversight Expectations. Especially the fact that the financial flow of a Link between RPSs always takes place over Target2, via the fiduciary accounts, ensures that settlement risk is reduced to the lowest level achievable today.