

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

Contact details:	Dr Goetz Moeller goetz.moeller@equens.com (+31 88 38) 54240
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Publication of comments allowed	
Name of Originator:	Equens SE ISO country code originator: NL

Issue	Comment	Reasoning
General comment: Exceptions for Eurosystem SIPS	Deletion	Eurosystem SIPS's are exempted from a number of oversight requirements. We believe that all SIPS should comply to the same rules for several reasons: 1) It is reasonable to expect that the risk involved in a Eurosystem SIPS is less than that of other SIPS's, however, this has to be assessed and confirmed by an overseer, and 2) in the interest of creating a level playing field, it should not be the case that commercial providers have to comply to different and/or stricter rules than governmental providers as this may put them in a less favourable position vis-à-vis governmental providers.
General comment: Oversight of Eurosystem SIPS	Amendment	We feel that the regulation should provide for a specific, independent overseer for the oversight of Eurosystem SIPS to avoid the semblance of a possible lack of independency. A provider should not oversee its own system.
General comment: Applicability of requirements on different types of systems	Amendment	Equens' CSM (Clearing & Settlement Mechanism) only provides clearing information to participants and prepares settlement within Central Banks. Would it be possible to detail possible roles of SIPS's and define which of the requirements are applicable based on the role a SIPS has?
General comment: Settlement of funds	Amendment	Many payment systems prepare settlement that subsequently takes place within Central Banks. Which parts of this regulation would apply to a system that doesn't settle funds itself?
General comment: Level playing field	Amendment	The regulation should also provide centrally defined requirements for less important payment systems, to create a level playing field between the various European operators and their overseers.
General comment: Annual review	Amendment	The SIPS is required to review a number of procedures / arrangements / plans annually. We feel that these reviews are necessary only if significant changes have taken place. This specifically is applicable to articles 5.1 risk management framework, 5.3 Material risk to other entities, 5.4 recovery and orderly wind-down 5.4 critical operations and services, 7.2 valuation policies and procedures, 12.1 definition of participant default, 12.5 default rules and procedures, 13.6 Plan for raising additional equity, 14.4 Investment strategy, 15.2 service level and operational reliability objectives and policies, 15.4 physical and information security policies, 15.5 business continuity plan, 16.1 access and participation criteria, and 16.3 procedures to facilitate the suspension and orderly termination of a participant's right of participation.
1.3 98/26/ec including 2009 SFD Directive?	Clarification	It is not clear whether or not the 2009 SFD Directive is included in the 98/26/EC Directive
2	Amendment	Please add definition of the term 'unwinding' to prevent misunderstanding of the articles where this term is used.
3.6 Best efforts	Amendment	This seems quite permissive, and not suitable for the high level of ambition one could expect from a SIPS.
4.8 Consultation of the public	Deletion	As C&S systems offer their services to the banking industry we wonder if and to which extent it makes sense to consult the public.

5.5 financial penalties regime and/or loss-sharing arrangements	Amendment	To prevents discussions and bargaining between independent operators and their customers (which may lead to arrangements that insufficiently cover the purpose of this article), we recommend to define the penalties and arrangements in the regulation.
6.5 credit risk; rules to address losses	Amendment	See comment on 5.5.
7.3 haircuts	Clarification	We propose to include "haircuts" in the definitions.
7.3 haircuts	Amendment	For reasons of level playing field between different operators throughout Europe we advise to harmonise the calculation of haircuts by defining them in the regulation.
12.4 disclose publicly	Amendment	As C&S systems offer their services to the banking industry and act in a highly competitive environment, we recommend that the disclosure should be limited to the participants and overseer.
13.4 funding wind-down plan	Amendment	The business model of processors is generally based on long-term contracts, often with substantial exit barriers. As a result, continuity is generally assured by a secured cash-flow from operations. Additionally, a commercial processor may need to grow via mergers may thus incur a certain indebtedness such that any cash requirements may impede the commercial development of the respective processor. Any requirement to secure a proper wind-down of a processor should therefore be based on operating cash flow securing a proper wind-down. A possible adjustment could be to include that a SIPS operator shall have enough cash flow to implement the plan referred in paragraph 3. At a minimum the cash flow should secure at least six month of current operating expenses.
14.4 disclose investment strategy	Deletion	Investment strategies of independent SIPS providers can include information that should not be disclosed for competitive reasons.
16.1	Amendment	As C&S systems offer their services to the banking industry and act in a highly competitive environment the disclosure should be limited to the participants and overseer.
16.3	Amendment	As C&S systems offer their services to the banking industry and act in a highly competitive environment the disclosure should be limited to the participants and overseer.
17	Amendment	In our opinion the Direct Participant should be fully responsible for the indirect participants activities
20.1	Amendment	As C&S systems offer their services to the banking industry and act in a highly competitive environment the disclosure should be limited to the participants and overseer.
20.4 Disclosure of fees, discount policies and descriptions of services	Deletion	Fees, discount policies and descriptions of services are essential features that distinguish a company from its competitors. Public disclosure of this information is not acceptable in a commercial market environment because it would negatively impact the competitive position of individual companies as well as the free market for payment processing services. Therefore publicly disclosing this kind of information is not an option for Equens.
20.5	Amendment	As C&S systems offer their services to the banking industry and act in a highly competitive environment the disclosure should be limited to the participants and the overseer. However, we don't consider this an issue if this only applies to commonly provided statistics such as already provided data in annual reports or anonymous reports like ECB statistics.
21. one or more competent authorities for the SIPS?	Amendment	In this article competent authority and competent authorities are mentioned. For reasons of efficiency, information requested and reported should be channelled from/to a single overseer for each individual SIPS. Of course competent authorities can share this information.

22. Corrective measures	Amendment	Oversight is performed by a number of competent authorities within Europe, each of which can define its own requirements based upon and within the boundaries of the regulation. For reasons of creating a level playing field between operators throughout Europe we think that an appeal against requirements of individual overseers should be possible.
24.2 Period before complying with the regulation	Amendment	If the Governing Council decides at a certain point in time that a payment system will be added to the list of SIPS's, what time does this system have to become compliant when the regulation is already in place? We suggest to add an arrangement for this situation in the regulation.
Version 1.0, 2013-08-09		