

APRIL 2008

ECB RESPONSE TO A UK PUBLIC CONSULTATION ON ISSUES RELATING TO PAYMENT SYSTEMS OVERSIGHT

On 30 January 2008 HM Treasury, jointly with the Financial Services Authority (FSA) and the Bank of England, published a consultation entitled “Financial stability and depositor protection: strengthening the framework”. While the consultation mostly deals with issues related to depositor protection and information sharing between the Bank of England and the FSA, some proposals have important implications for the oversight framework for payment systems in the United Kingdom. From a payments oversight perspective there are two main issues to be considered: (i) the legal basis for the Bank of England’s role in payment systems oversight and (ii) the proposed new arrangements for oversight of retail payment systems and instruments which advocate a transfer of the responsibility for oversight of retail payment systems to the FSA. Consequently the mandate of the FSA would be extended to cover the efficiency and security of the payment industry and infrastructures, well beyond consumer protection issues.

(i) Legal basis for the Bank of England’s role in payment systems oversight

As the Bank of England has currently only non-statutory responsibility for ensuring the resilience of payment systems, the European Central Bank (ECB) welcomes the proposal to formalise the Bank of England’s role and responsibilities in the area of financial stability through legislation. The ECB fully agrees that providing the Bank of England with a statutory objective in the area of payment oversight would clarify the Bank’s role in this area and improve accountability arrangements relating to the Bank’s overall financial stability activities.

(ii) Oversight of retail payment systems and instruments

As regards the proposal to transfer the responsibility for oversight of retail payment systems to the FSA, leaving the Bank of England with responsibility for oversight of large-value payment systems, there are several areas of concern:

1. The national central banks have to date been the only regulatory authorities actively involved in the promotion and development of best practices in the payment systems industry in Europe. The framework for this initiative is effective since it is based on the technical experience and moral authority of the national central banks. Moreover, international consistency and effectiveness has been ensured through coordinated action by central banks on the basis of principles established either at the G-10 or EU level. It can be questioned whether giving oversight responsibilities to a non-central bank entity is compliant with European legislation. The Statute of the European System of Central Banks (ESCB) confers upon the ESCB the task of promoting the smooth operation of payment systems and does not distinguish between retail and large-value payment systems. Given central banks' responsibility to foster public confidence in money and in view of their acquired expertise in ensuring the safety and efficiency of payment systems, it seems appropriate that the oversight of payment systems is undertaken by central banks and includes both large-value and retail payment systems and instruments. Moreover, any possible longer-term developments towards a merger of retail payment systems and large-value payment systems could be hampered by such a distinction of oversight responsibilities since, in the future context, it would arguably be more difficult to determine adequately where the respective responsibilities lay.
2. As already expressed by the ECB in its opinion of 20 January 2000 provided to the Luxembourg Ministry for the Treasury and the Budget¹, the objectives of prudential supervision and of oversight are conceptually distinct and are pursued with different viewpoints and tools. Therefore, given the specific responsibilities and expertise of central banks on payment issues, as highlighted above, only central banks should be entrusted with payment systems oversight responsibilities.
3. Moving the oversight of retail payment systems, including payment instruments, away from the central bank could have repercussions on the oversight framework applicable to retail payment systems. The consultative paper does not specify whether the oversight framework for retail payments could change under the FSA's responsibility. However, currently certain internationally agreed oversight standards are used at the European level. For instance, BACS, which is the United Kingdom's largest retail payment system, is assessed against the Core Principles for systemically important payment systems, which are agreed and applied at the international level. Would the FSA unilaterally adopt different oversight standards than those internationally agreed

¹ Opinion of the European Central Bank of 20 January 2000 at the request of the Luxembourg Ministry for the Treasury and the Budget on a draft legislative proposal implementing Directive 98/26/EC on settlement finality in payment and securities settlement systems in the law of 5 April 1993, as amended, relating to the financial sector and completing the law of 23 December 1998 creating a commission in charge of the prudential supervision of the financial sector. (http://www.ecb.europa.eu/ecb/legal/pdf/EN_CON_99_19.pdf)

and used at the European level? In the context of SEPA, the Eurosystem is clearly concerned with the future shape of the oversight framework for retail payment systems in the United Kingdom. SEPA will increase competition between European retail payment infrastructures. It is therefore important to ensure a level playing-field between infrastructures in the conduct of oversight activities. This requires that European regulators and overseers agree on minimum oversight standards for retail payment systems. In addition, SEPA encourages retail payment infrastructures to become interoperable, notably by implementing links between them. From the Eurosystem's perspective, possible links with UK retail payment systems should not involve supplementary risks and should also be subject to an adequate oversight policy.

4. The possible change in the oversight competencies in the United Kingdom also raises issues regarding the communication and cooperation between the authority entrusted with the oversight of these systems and the national central bank and other central banks, if the systems process transactions that are denominated in a currency other than the local one. For example, it should be noted that the proposed transfer of responsibilities for retail payment systems and instruments to the FSA would affect the existing arrangements for the cooperative oversight of VISA Europe, which involves the Bank of England and the Eurosystem national central banks working together. Should the FSA become the overseer of retail payment systems and instruments in the United Kingdom, it would raise the issue of whether a similar cooperative oversight arrangement between the Eurosystem and the FSA could be implemented.