

**BANK OF GREECE**

MONETARY POLICY COUNCIL

**MONETARY POLICY COUNCIL ACT No. 50/31.7.2002**

**Re: Establishment of a framework for the oversight of payment systems**

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THE MONETARY POLICY COUNCIL, having regard to:

- a) Articles 2, 55, 55B and 55C of the Statute of the Bank of Greece;
- b) Article 105 (2) of the Treaty establishing the European Community, as well as Articles 3, 12.1 and 22 of the Statute of the European System of Central Banks (ESCB) and the European Central Bank (ECB);
- c) the provisions of Law 2076/1992, as amended by Presidential Decree 258/19.9.97, in particular the provisions thereof referring to the definition of financial and credit institutions;
- d) the provisions of Law 2789/2000 re: "Settlement finality in payment systems";
- e) the provisions of Presidential Decree 150/2001 referring to the framework governing electronic signatures
- f) the need to establish a framework of general principles for ensuring the smooth functioning of payment systems;
- g) the relevant framework of principles applied by the Eurosystem;

**HAS DECIDED**

to establish the following framework of general principles and procedures that will enable the Bank of Greece to perform its tasks relating to the oversight of payment systems and payment instruments.

Specifically:

**I. Definitions**

For the purposes of this Act, the following definitions shall apply:

- a) *Central counterparty*: An entity which is interposed between the institutions that are participants in a system, i.e. financial and credit institutions, and which acts as the exclusive counterparty of such institutions with regard to their payment orders.
- b) *Clearing house*: A set of procedures used by credit and financial institutions and investment firms to process and exchange data and/or documents relating to the transfer of funds and/or securities to other financial institutions or investment firms. These procedures incorporate a netting mechanism for calculating bilateral or multilateral positions, based on the residual and algebraic sum total of balances on cash accounts and securities accounts held by system participants, in order to settle the obligations on a net basis, as opposed to a gross settlement system, whereby the settlement occurs on an order-by- order basis.
- c) *Credit risk*: The risk that a participant in a payment system will be unable to settle his obligations at a given time or at any time thereafter.
- d) *Direct participant*: A participant in a payment system who is responsible to the settlement agent (or to all other participants) for the settlement of his own payments, those of his customers and those of the indirect participants on whose behalf he acts.
- e) *Electronic money (e-money)*: Monetary value, as represented by a claim on the issuer, which is (i) stored on an electronic device (chip card or software), (ii) issued on receipt of funds without necessarily involving movements in bank accounts and (iii) accepted as a means of payment by undertakings other than the issuer.
- f) *Electronic money scheme*: An infrastructure that enables electronic money to be issued, used and redeemed. The scheme enables the storage of monetary value on an electronic device that may be widely used for effecting payments to undertakings other than the issuer, without necessarily involving movements in bank accounts, but in the form of a prepaid bearer instrument, issued on receipt of funds. For the purposes of this Act, this definition refers to electronic money

schemes established in Greece, governed by Greek law and operating domestically or on a cross-border basis, pursuant to the applicable laws.

- g) *Electronic payment*: Any transaction carried out electronically, irrespective of the payment instrument used.
- h) *Indirect participant*: A participant in a payment system who is responsible only to those direct participants who have undertaken the settlement of payment orders on his behalf.
- i) *Legal risk*: the risk of loss and more generally, a disruption of the smooth operation of a payment system, as a result of the unexpected application or interpretation of legal or contractual provisions or the risk that contractual provisions will not be enforceable, including cases where the application of laws and regulations is unclear or the legal basis of a payment system is non consistent or compatible with the provisions of the jurisdiction to which the payment system is subject.
- j) *Liquidity risk*: The risk that a participant in a payment system will be unable to settle his obligations when due, without this implying that he is insolvent.
- k) *Operational risk*: the risk of unexpected loss and/or disruption of the smooth functioning of a payment system as a result of deficiencies in information systems or internal control systems, operational weaknesses, human error or technical error.
- l) *Payment instrument*: Any instrument enabling the holder to transfer funds in the context of payment systems.
- m) *Payment order*: Any order by which the originator places at the disposal of a recipient an amount of money by means of a book entry in an account with a credit institution, the Bank of Greece or a settlement agent, or any order that entails the repayment of debt in accordance with the rules of the payment system.

- n) *Payment system manager*: The entity which operates a payment system, lays down operating rules and is responsible for ensuring the compliance and the smooth functioning of the payment system.
- o) *Payment system*: A system consisting of a set of instruments and banking procedures which are used by a group of persons and entities, on the basis of contractual arrangements and in accordance with the operating rules of the system, to enable the transfer of funds and the circulation of money in a region, usually a country. In this sense, a payment system comprises: (i) credit and financial institutions, (ii) non-credit institutions providing payment services, (iii) a technical infrastructure, (iv) a network interlinking the agents that mediate in payments, (v) procedures for clearing, netting and settling payments and (vi) rules governing payment instruments and the overall operation of the system.
- p) *Settlement agent*: An institution that keeps settlement accounts for financial and credit institutions and/or for a central counterparty, within a payment system; such accounts are used for settling the payment orders handled by the payment system. To this end, the settlement agent may extend credit to financial and credit institutions and/or the central counterparty.
- q) *Systemic risk*: The risk that the failure of a participant in a payment system to meet his financial obligations in the system will result in other participants being unable to meet their obligations.
- r) *Systemically important payment system*: A system that fulfills at least one of the following conditions: a) is the sole payment system in the country or the main payment system given the aggregate value of payments it handles, b) mainly handles large-value payments and c) is used for settling financial market transactions or for settling payments of other systems.

## **II. The objectives of oversight**

The oversight of payment systems shall aim at monitoring and promoting the smooth functioning of payment systems and instruments, particularly in order to ensure the attainment of the following goals:

- a) the stability and reliability of payment systems by identifying, preventing and dealing in time with potential risks, in particular credit, systemic, legal, operational and liquidity risks;
- b) the effectiveness and efficiency of payment systems, so that the cost of services provided to users appropriately reflects the value of these services;
- c) transparency of the operating rules of payment systems, as well as of the rights and obligations of systems' participants and users;
- d) appropriate administrative, operational and technical structure of payment systems;
- e) maintaining public confidence in the payment instruments used and the payment services offered, in particular regarding the settlement of payments under pre-specified terms (procedures, execution times etc.), by ensuring technical and legal soundness and effective fraud prevention.
- f) promoting automation in the use and processing of payment instruments as well as interoperability of supporting systems.

### **III. Scope**

1. Oversight shall apply to payment systems, as defined in Section I hereof, including those operated by the Bank of Greece. For the purposes of this Act, the notion of payment systems shall also include:
  - a) any arrangement between two or more market participants, which (i) is subject to legislative, regulatory or contractual provisions and to common and standardised rules, (ii) enables the execution of payment orders between such

market participants and (iii) is governed by Greek law or is effective in Greece;

b) any electronic money scheme, as defined in Section I hereof.

2. In addition, oversight shall apply to any payment instruments used in the context of payment systems, to access to such instruments (e.g. electronic access), as well as to any supporting products and services.

#### **IV. Performance of oversight**

1. Without prejudice to the banking supervision legislation in force, the oversight of payment systems, electronic money schemes and payment instruments that are used in the context of payment systems, shall be performed by the Bank of Greece, in the framework of the oversight policy formulated by the Eurosystem, and shall entail the collection of data and information on payment systems and instruments using questionnaires and, where necessary, on-site inspections.

Oversight shall mainly focus on the examination of the following:

- a) The completeness and suitability of the operating rules of payments clearing and settlement systems and electronic money schemes and their compatibility with the applicable legal framework, in particular in terms of the criteria for participation in/expulsion from such systems.
- b) The adequacy of risk management by payment system managers, in particular the existence of loss-sharing rules in the event of default on the part of a participant.
- c) The adequacy of the technical infrastructure and of the procedures safeguarding the authenticity of transactions, the prevention of fraud and the system's capability to settle transactions at the end of the business day in the event of insurmountable technical problems.

- d) The terms and conditions (notably execution times and cost) for the use of payment instruments by the public, the observance of provisions on the transparency of transactions, the adoption of internationally recognised standards and the interoperability of the systems, products and services that support the use of payment instruments.
  - e) The manner in which electronic payments are conducted in the context of electronic banking and electronic commerce, as well as the products and services supporting these payments. Electronic payments shall be examined mainly in terms of their operational reliability and the security measures applied.
2. The Bank of Greece may, where necessary, propose to the managers of payments systems or electronic money schemes modifications regarding the operating rules and/or the design of such systems or schemes with a view to mitigate risks. In order to secure the operational reliability of payment instruments, the Bank of Greece may propose measures to be taken by issuers of payment instruments and other payment service providers, such as electronic payment intermediaries. The above-mentioned entities shall be required, within a reasonable period specified by the Bank of Greece and not less than one month, to report the measures they have taken or intend to take in order to comply with the Bank's recommendations, as well as the timetable for their implementation. In cases of non-compliance, the Bank of Greece shall impose the sanctions provided for.
  3. In the performance of its oversight function, the Bank of Greece shall cooperate with other competent supervisory authorities in Greece and abroad and with market participants. Moreover, whenever necessary, the Bank of Greece shall use the services of experts, in particular for the -mainly technical- evaluation of payment systems, electronic money schemes and electronic payments.

**V. General principles governing payment systems, electronic money schemes and payment instruments**

## **A. Payment systems and instruments**

1. Any payment system identified by the Bank of Greece as systemically important, as defined in Section I hereof, shall have a legally sound set of operating rules, which shall:

- a) fully and clearly prescribe the rights and obligations of the system's manager and participants;
- b) specify the exact time of the day when the settlement of payments becomes final, as envisaged by Law 2789/2000;
- c) provide adequate information enabling participants to evaluate the credit and liquidity risks they incur through participation in the system;
- d) lay down specific procedures for the management of credit and liquidity risks and precisely define the respective responsibilities of the system's manager and participants in that field;
- e) ensure the final settlement of payments on the day of value and at the latest at the end of the day;
- f) state that the settlement of payments shall be effected through accounts with the Bank of Greece;
- g) ensure at minimum the timely completion of daily settlement, in the event of inability to settle by the participant with the largest single settlement obligation (applicable to multilateral net settlement systems );
- h) establish objective and publicly disclosed criteria for participation, which allow fair and open access.

2. Furthermore, payment system managers shall take the necessary measures to ensure:

- a) a high degree of security and operational reliability and efficient contingency arrangements for the timely completion of daily payments processing and settlement;
- b) the enforceability of the legal framework of the system under all relevant jurisdictions;

- c) that the system provides a means of making payments which is practical for its users and efficient for the economy;
- d) accountable, transparent and effective governance arrangements.

3. The above principles shall also be complied with by systems that are not identified as systemically important. In these cases, however, their scope of application may be adjusted by the Bank of Greece *on a case-by-case basis*, taking into account objective criteria such as the value of payments, the degree of concentration, the existence of alternative arrangements for each payment instrument, participants' access to standing facilities for meeting their liquidity needs and the participation of foreign credit institutions, especially when the legal framework of their home country is not fully compatible to that applied in Greece.

4. Issuers of payment instruments used in the context of payment systems shall ensure the operational reliability of such instruments. With particular regard to electronic payments made in the context of electronic banking and electronic commerce, payment system managers and issuers of payment instruments shall adopt standards and procedures that ensure: a) the authentication of the parties involved in transactions, b) the integrity of transaction data c) the confidentiality of transaction data, d) non-repudiation of transactions and e) the availability of the payment services provided.

5. Issuers of payment instruments shall report and specify any internationally recognised standards that they apply, which contribute to the automated processing of payment instruments.

6. The terms and conditions governing individual payment instruments that are used in the context of payment systems, regarding cost and execution times, shall be transparent, publicly disclosed and compatible with the relevant provisions in force.

## **B. Electronic money schemes**

1. Electronic money schemes shall have legal arrangements and establish a set of operating rules, which shall clearly define the rights and obligations of all the

parties involved, including electronic money issuers, operators, undertakings and holders.

2. The above-mentioned rules shall state that the issuer of electronic money shall, at upon the holder's request, redeem electronic money at par value during the period of validity.
3. The above-mentioned rules shall provide for a loss-sharing scheme and shall designate the authorities competent to resolve any disputes.
4. In the case of schemes that operate also on a cross-border basis, the electronic money issuer and/or the electronic money scheme manager shall assess the impact of the legal framework applied in the countries where the scheme operates.
5. Electronic money scheme manager shall implement appropriate technical, organisational and procedural safeguards for the prevention or the timely detection of counterfeiting and fraud.
6. Electronic money schemes shall put in place procedures of internal organisation so as to ensure fulfilment of their reporting requirements to the Bank of Greece and compliance with the provisions on the prevention of money laundering.
7. It is advisable that the technical architecture of electronic money schemes allows for a high degree of adaptability to the applicable international standards, with a view to promoting interoperability with other schemes, especially in the euro area.
8. The Bank of Greece may decide to exempt an electronic money scheme from the principles referred to in items 1 to 6 above, if it deems that the size of the scheme is such that a potential problem would not result in a high degree of risk for its participants and would not affect public confidence in the specific payment instrument. The size of the scheme is assessed mainly on the basis of the outstanding monetary value in circulation, the number and geographical distribution of the undertakings that have joined the scheme and their financial or business relationship with the electronic money issuer.
9. The Bank of Greece may decide, on a *case-by-case* basis and in accordance with the following indicative criteria, to expand the notion of electronic money schemes to include any multi-branch loyalty schemes, developed in the context of common marketing, through the supply of electronic bonus points to their customers. Some indicative criteria for the inclusion of such schemes are the number, type and geographical distribution of the undertakings which have joined the scheme and the maximum value that can be stored on the electronic device.

The managers of these schemes shall be required to comply with the provisions of this Act within three months of their identification as electronic money scheme operators.

- 10 The present Act shall be without prejudice to the provisions applying to the issuance of electronic money in the form of multi-purpose prepaid cards (Bank of Greece Governor's Act 2366/3 August 1995).

## **VI. Reporting to the Bank of Greece**

Managers of payment systems and electronic money schemes, as well as credit institutions and other payment services providers, shall report information as requested by the Bank of Greece and the required data on payment systems, electronic money schemes and payment instruments, as specified in Annexes I, II and III.

## **VII. Authorisations**

The Monetary Policy and Banking Department of the Bank of Greece is hereby authorised to further elaborate the application of the principles and criteria referred to herein, to adjust, when necessary, the reporting content and frequency and to provide clarifications on the implementation hereof.

The government budget shall incur no expenditure on account of the provisions of the present Act.

This Act shall be published in the Government Gazette (Series A).

THE MEMBERS

THE CHAIRMAN

P. Thomopoulos

Nicholas Garganas

V. Droukopoulos      A. Matzavinos