

National payment system – overview of regulatory mandates*

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Abstract This article discusses the concept of the national payment system (NPS) and the different regulatory models being applied in select countries for conducting oversight over different components of the NPS. We describe the core components of the NPS and their use in the World Bank in its payment system technical assistance projects. Further, we discuss the need to define the regulatory mandates and parameters when different regulators are involved for the oversight of the different components of the NPS, drawing upon international examples comprising the European Union (Germany and Luxembourg) and Turkey.

Keywords: National payment system · Regulatory models · Nine pillars methodology · Financial stability · Payment systems and operations

1 Introduction

The oversight of payment and settlement systems is recognized as a “central bank function whereby the objectives of safety and efficiency are promoted by monitoring existing and planned systems, assessing them against these objectives and, where necessary, inducing change”.² The oversight of payment and settlement systems over the years has often been as a critical function of the central bank contributing to the overall financial stability, along with prudential supervision (which function could be with an independent banking supervisory authority).

Worldwide, the trend has been to recognise and strengthen the role of the central banks in ensuring financial stability. As payment and settlement systems is the major transmission channel of risk, the need to regulate and oversee payment and settlement systems as part of the wider mandate of ensuring financial stability of the central banks is being underscored in all the economies world over. While this is the case, the advent of technology and the entry of non-banks into the payments area, especially in the area

* The views expressed in this article represent the personal views of the authors and do not represent the views of the World Bank.

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² See Bank for International Settlements, Committee on Payment and Settlements Systems Central bank oversight of payment and settlement systems, May 2005.

of retail payments, and to promote innovation and competition, the oversight over certain components of the national payments system (NPS) are being reassessed in several countries. For instance, in the case of UK, a new Payment Systems Regulator³ has been set up to regulate and oversee the retail payment systems, with the Bank of England⁴ being responsible for the oversight and supervision of financial market infrastructures (FMIs), as part of its mandate for ensuring financial stability. In contrast, all aspects of the payments system in Indonesia are regulated and overseen by Bank of Indonesia⁵, as part of its mandate of achieving and maintaining the stability of the value of the Rupiah and ensuring financial system stability. The Financial Services Authority (OJK)⁶, a separate regulator in Indonesia is tasked with regulating and supervising financial services activities in banking, capital markets, non-banking financial sector and consumer protection.

Based on the legal mandate and the division of responsibilities, it is quite often the case that different authorities including the central bank are involved in discharging the oversight function over the national payments system (NPS). For instance, the licensing and regulation of non-bank payment service providers and operators could be vested in a different regulatory authority. Other public policy objectives such as anti-money laundering and combating the financing of terrorism (AML/CFT), consumer protection, anti-competitive practices, could all be under the aegis of different authorities.

This article while taking into account these broad trends, throws light on the concept of the NPS and the different regulatory models being applied in select countries for conducting oversight over different components of the NPS. In section 2, a definition and outline of the NPS is presented. The core components of the NPS as outlined in the “General guidance of national payment system development⁷”, the “nine pillars” methodological approach derived from the above and used by the World Bank in its payment system technical assistance projects, are discussed in section 3. Section 4 talks about the need to define the regulatory mandates and parameters when different regulators are involved for the oversight of the different components of the NPS, drawing upon international examples comprising the European Union (Germany and Luxembourg) and Turkey. These examples are used to present the two stylized models of oversight and supervision over payment and settlement systems that are followed in these countries. Section 5 provides the conclusion, highlighting the need for an effective cooperative framework between the regulators for the safe and efficient functioning of the NPS.

³ The Payment Systems Regulator (PSR) is a subsidiary of the Financial Conduct Authority of the UK, and is independent, with its own board and managing director. (Source: <https://www.psr.org.uk/>)

⁴ The Bank of England supervises three main types of FMIs: (i) recognised payment systems; (ii) central securities depositories; and (iii) central counterparties. It works with the Financial Conduct Authority (FCA) and overseas regulators to supervise FMIs. (Source: <https://www.bankofengland.co.uk/financial-stability/financial-market-infrastructure-supervision>)

⁵ <http://www.bi.go.id/en/tentang-bi/fungsi-bi/tujuan/Contents/Default.aspx>

⁶ <http://www.ojk.go.id/en/tentang-ojk/Pages/Tugas-dan-Fungsi.aspx>

⁷ See Bank for International Settlements, Committee on Payments and Market Infrastructures (formerly CPPS), General guidance for national payment system development, 2006. The guidance framework is widely used in all World Bank payments system technical assistance projects.

2 The national payment system (NPS)

A country's National Payment System (NPS) consists of a defined group of institutions and a set of instruments and procedures, used to facilitate the circulation of money within the country and internationally. The main elements of a modern national payments system include:⁸

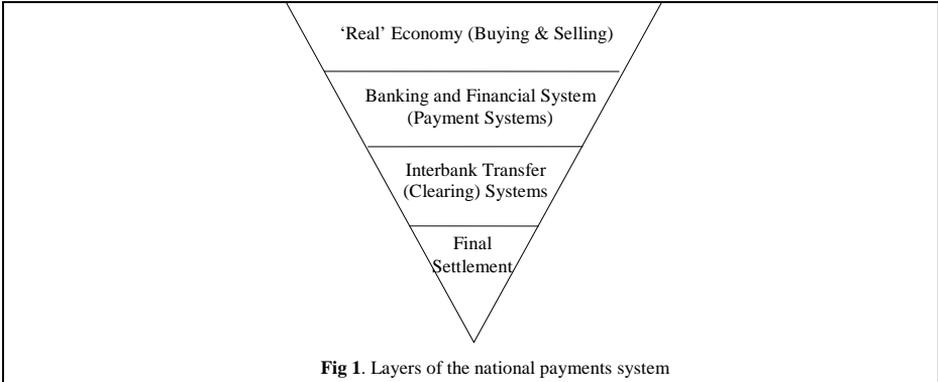
- Payment instruments used to initiate and direct the transfer of funds between the accounts of payers and payees;
- Payment infrastructures for transacting and clearing payment instruments, processing and communicating payment information, and transferring the funds between the paying and receiving institutions;
- Electronic book-entry securities system(s) to register and record changes in ownership of both private and government securities;
- Financial institutions that provide payment accounts, instruments and services to consumers, and businesses and organizations that operate payment transaction, clearing and settlement service networks for those financial institutions;
- Non-financial institutions that provide payment and access to payment-related services and offer various products to satisfy market needs;
- Market arrangements such as conventions, regulations and contracts for producing, pricing, delivering, and acquiring the various payment instruments and services;
- Laws, standards, rules, and procedures set by legislators, courts, and regulators that define and govern the mechanics of the payment transfer process and the conduct of payment service markets.

As can be seen from the above, the NPS is a broad concept and encompasses a country's entire matrix of institutional and infrastructure arrangements and processes for initiating and transferring monetary claims in the form of commercial bank and central bank liabilities. Seen from this perspective, any country's economy can be viewed as a series of layers in an inverted pyramid, as depicted in Figure 1, in which each layer is supported by the layers beneath it. The broadest layer of the pyramid represents the real economy and the financial markets, i.e. the buying and selling of goods and services throughout the nation. It is supported by the country's banking system – the next level of the pyramid – which provides payment services to all sectors of the economy.⁹ The third level consists of a limited number of interbank value transfer systems through which payment and other financial transactions are processed. The final settlement of funds transfers takes place across the accounts

⁸ See Bank for International Settlements, Committee on Payments and Market Infrastructures (formerly CPPS), General guidance for national payment system development, 2006.

⁹ Comprising the individual, retail, industrial and commercial, financial, government, and international sectors.

which approved institutions hold with the central bank, whose pivotal role is vital to the functioning of the economy as a whole.



The NPS is therefore a core component of the broader financial system and is the infrastructure that provides the economy with the channels or circuits for processing the payments resulting from the many different types of economic transactions that take place on a daily basis. It can be viewed as the ‘lubrication system’ for the engine of the economy.

A well-functioning NPS requires a delicate balance between market-driven competition, cooperation and public good considerations. In a mature environment, banks and other payment service providers should compete for payments business and customers, while achieving the benefits and efficiencies that stem from the sharing of non-competitive infrastructures. In the national interest, it is imperative that economies of scale are achieved and that the national payment service infrastructure allows as many participants as possible to offer their services to the public.

2.1 Scope and components of a NPS

Taking account of the previous points, it is clear that a comprehensive NPS comprises, a country’s entire matrix of institutional and infrastructure arrangements and processes for initiating and transferring monetary claims in the form of commercial bank and central bank liabilities. The main elements of a NPS, therefore, include the following:

- Institutions providing financial intermediation;
- Non-financial institutions and financial institutions that provide payment services;
- Businesses and organizations that operate payment transaction, clearing and settlement service networks (payment systems);
- Institutions providing services to payment systems (payment system operators – PSOs) and payment service providers (PSPs);
- A legal and statutory framework;
- Rules, regulations and agreements;
- Appropriate payment instruments;

- Processing systems and procedures;
- A cost-effective technological infrastructure for telecommunications;
- Clearing and settlement mechanisms that adequately balance risk and efficiency requirements;
- An appropriate oversight framework including inter-regulatory cooperation.

The trends in NPS development focusses on initiatives such as: (i) broadening the range of payment instruments and services including a wider pool of providers inclusive of non-banks; (ii) contributing to financial inclusion; (iii) encouraging innovation; (iv) improving cost efficiency; (v) augmenting consumer protection measures; (vi) improving anti-money laundering and countering the financing of terrorism measures; (viii) enhancing interoperability and resilience; (ix) better containing legal, operational, financial and systemic risks in payment infrastructures; (x) improving market contestability by limiting anti-competitive practices; (xi) creating more suitable supervisory, oversight¹⁰ and regulatory regimes for the national payment system; and (xi) enhancing the overall safety and efficiency of the NPS.

In some countries, all of these responsibilities vest with the central bank which is charged with the overall development of the NPS, while in other countries some of the aspects of these responsibilities and activities vest with other regulators. Notwithstanding the presence of different regulators, it is particularly important to recognize the need for cooperation among the regulators to achieve the above objectives in totality for the overall safety, efficiency and development of the NPS. This is important and relevant as the infrastructures for retail payment, securities settlement and large-value payment systems are interconnected and interdependent. As the systems develop, the country's principal financial institutions generally become participants in all of them. Settlement in one system could affect the safety and efficiency of settlement in the others. Therefore, in order to mitigate the potential cross-system risks, the legal, operational, financial and systemic risks need to be monitored and well-managed through a cooperative framework among the regulators. The safety and efficiency of the NPS in terms of the various payment systems and instruments also has a bearing on the public confidence in money and in the use of more electronic payments.

3 The “nine pillars” methodology

The above framework in conjunction with the recommendations made in various Committee on Payments and Market Infrastructures (CPMI, formerly CPSS) publications and other World Bank publications¹¹, notably the World Bank's Retail payments package¹² and the experience and previous work of the World Bank on payment systems development in several countries around the world, the World Bank has developed the “nine pillars” methodological approach to the development of the

¹⁰ By convention, the term oversight is reserved to designate the specific responsibilities and tools central banks have with regard to payment and settlement systems due to their unique character of being both a public authority and a bank. See Bank for International Settlements, Committee on Payment and Settlements Systems Central bank oversight of payment and settlement systems, May 2005.

¹¹ See Bank for International Settlements, Committee on Payments and Market Infrastructures (formerly CPSS) (i) “General guidance for national payment systems development”; (ii) “General principles for international remittance services”

¹² “Developing a comprehensive national retail payments strategy”; “A practical guide for retail payments stocktaking”; “From remittances to m-payments: Understanding ‘alternative’ means of payment within the common framework of retail payments system regulation”; “Innovations in retail payments worldwide: A snapshot: Outcomes of the global survey on innovations in retail payments instruments and methods 2010” <http://www.worldbank.org/en/topic/paymentssystemremittances/brief/retail-package>

NPS strategy. The “nine pillars” strategy, aims to provide public authorities and market participants with detailed guidance on how to develop and implement a comprehensive, strategic payments reform process; identifies a methodology for undertaking a detailed stock-taking of a country’s national payments landscape; explores the development of a normative framework that underpins the development of a safe and efficient payment system including retail payments involving innovative payment mechanisms.

The nine pillars take into account all the parameters necessary for the successful development of a country’s national payment system. These comprise: Pillar 1 – the legal framework; Pillar 2 – the settlement mechanisms for large-value and time-critical payments; Pillar 3 – the securities settlement systems; Pillar 4 – the inter-bank money markets; Pillar 5 – the retail payment systems; Pillar 6 – government payments; Pillar 7 – remittances; Pillar 8 – oversight of the NPS; and Pillar 9 – co-operative framework for the development of the NPS.

To provide a better understanding, a brief description of each of the “nine pillars” is given below along with their respective roles in the country’s national payment system.

Legal framework: The legal framework comprises the general laws in the country as well as statutes specific to the safe and efficient functioning of the NPS and includes the relevant rules and regulations framed thereunder. All elements of the NPS should be based on a well-founded, clear, transparent, and enforceable legal basis. The legal basis provides the foundation for relevant parties in the NPS to define respective rights and obligations, provides the rules and procedures which should be enforceable, and provides the overall framework for a sound risk management. In addition, regulatory and supervisory powers of the regulator including licensing, sanctions etc., are derived from the legal framework.

Large-value payments system: A payment system is generally categorized as either a large-value payment system (LVPS) or as a retail payment system. An LVPS is a funds transfer system that typically handles large-value and high-priority payments. In contrast to retail systems, many LVPSs are operated by central banks, using an RTGS or equivalent mechanism. LVPS are generally classified as systemically important payment systems. In general, a LVPS is considered to be systemically important – if it has the potential to trigger or transmit systemic disruptions; is the sole payment system in a country or the principal system in terms of the aggregate value of payments; and could be systems that mainly handle time-critical, high-value payments; and systems that settle payments used to effect settlement in other systemically important financial market infrastructures.

Securities Settlement Systems (SSS) including Central Securities Depositories (CSD): A securities settlement system enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules. Such systems allow transfer of securities either free of payment or against payment. When transfer is against payment, many systems provide delivery versus payment (DvP), where delivery of the security occurs if and only if payment occurs. A central securities depository provides securities accounts, central safekeeping services, and asset services, which may include the administration of corporate actions and redemptions, and plays an important role in helping to ensure the integrity of securities issues (that is, ensure that securities are not accidentally or fraudulently created or destroyed or

their details changed). A CSD can hold securities either in physical form (but immobilized) or in dematerialized form (that is, they exist only as electronic records). In many countries, a CSD also operates a securities settlement system. SSS in the broadest sense of the term are also critical for the functioning of the LVPS for facilitating the provision of collateralized credit facilities to the participants in the LVPS; and in the implementation of monetary policy operations.

Inter-bank money markets: Inter-bank money markets serve an important purpose in serving and fulfilling the liquidity management needs of the banks. They serve as channels of liquidity distribution between banks in conjunction with any liquidity support provided by the central bank to the banks. The inter-bank borrowing could either be on a collateralized basis or on an uncollateralized basis. The lending and borrowing of funds is effected through the LVPS and where the borrowing is collateralized, the SSS along with the LVPS is also involved.

Retail payment systems: A retail payment system is a funds transfer system that typically handles a large volume of relatively low-value payments in such forms as cheques, credit transfers, direct debits, card payment and increasingly mobile payment transactions. Retail payment systems may be operated either by the private sector or the public sector, and are usually settled on a multilateral deferred net settlement (DNS) basis. Retail payment systems are used by individuals, households, businesses with one of the biggest users of the retail payments being the Government both for its payments as well as its receipts.

While banks were previously largely involved in retail payments (non-banks were involved in card schemes), with the advent and greater use of technology a variety of non-banks have come to be involved in every stage of the retail payment transaction life cycle including in the clearing and settlement process. A stylized retail payments model is provided in Figure 2 below to capture this in greater detail.

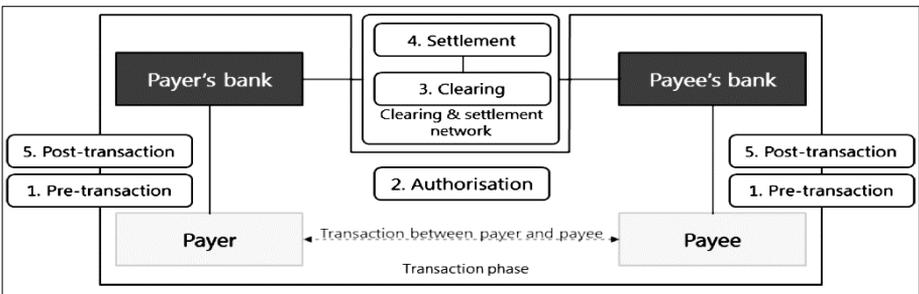


Fig 2. Retail payments, “Non-banks in retail payments”, <http://www.bis.org/cpmi/publ/d118.pdf>, September 2014

In the above retail payments model, non-banks can be involved at all stages of the payments process. Typically, the role of non-banks can be classified under four distinct categories, based on the roles played by them at the different stages of the

payment chain; the type of service provided; and the predominant type of relationship with banks. Non-banks can accordingly be classified as¹³:

- (i) **Front-end providers:** Non-banks as front-end providers usually comprise mobile wallets, internet payment gateway providers, credit card acquirers or, payment institutions and e-money institutions in the EU. They are not usually involved in clearing and settlement, but operate in the pre-transaction, initiation, and post-transaction stages of a payment transaction. They may often compete with banks for providing these services, while also usually having a cooperative framework with banks for the clearing and settlement of their transactions.
- (ii) **Back-end providers:** Back-end non-bank providers do not have a direct relationship with the payer or payee as is the case with front-end providers. They mostly provide specialized back-end services relating to several payment instruments to banks, either through an outsourcing or a cooperative arrangement, focusing on or two stages of the payments process. Typical examples include information technology (IT) services, providers of data centre services, trusted service managers, data security firms, or entities that provide back office operations, anti-money laundering, audit or compliance.
- (iii) **Operators of retail payment infrastructure:** As indicated by the name, these entities operate the retail payment infrastructure by providing clearing and processing services with respect to retail payment instruments. The card networks are a typical example of this kind of activity.
- (iv) **End-to-end providers:** Payers and payees have a direct relationship with end-to-end providers. These are closed-loop systems, where the movement of funds from a payer's account to a payee's account does not necessarily involve the use of a bank. Examples of such closed-loop systems are the three-party card schemes, some types of remittance services and e-money products. Banks could still be used to redeem or fund end-user accounts with such providers and could also act as agents for such providers. Other non-banks could also act as agents for such end-to-end providers.

Government payments: As indicated above, the Government is one of the biggest users of the payments infrastructure in the country. The Government uses the payments system to affect salary payments, vendor payments, and for the disbursement of social security benefits. On the receipts side, the Government uses the payment systems extensively for collection of taxes, customs, revenues, etc.

Remittances: Remittances are one of the sources of external financing in developing countries and contribute significantly to the GDP in several countries. These remittances are largely constituted by the flow of funds from migrant workers back to their families in their home country. The payment system aspects of remittances, deal with the remittance services market to be contestable, transparent, accessible and sound.

¹³ See Bank for International Settlements, Committee on Payments and Market Infrastructures (formerly CPPS) "Non-banks in retail payments" September, 2014 <http://www.bis.org/cpmi/publ/d118.pdf>

Oversight and cooperation: The last pillar is oversight and cooperation. By convention, the term oversight is reserved to designate the specific responsibilities and tools central banks have with regard to payment and settlement systems due to their unique character of being both a public authority and a bank. The broad definition of oversight used here, also subsumes the catalyst function within the oversight framework, insofar as the same is part of the broader oversight objectives of the central bank. The oversight function as indicated in the definition consists of three activities: (i) monitoring; (ii) assessing; and (iii) inducing change.

In addition to central banks, in certain jurisdictions, other regulatory authorities could have regulatory and supervisory powers over particular aspects of payment and settlement systems. These include other authorities such as banking supervisors, securities regulator, competition authority, consumer protection authority and financial intelligence unit authorities. The range of regulatory and supervisory activities could include licensing, periodic submission of data, on-site inspections and off-site monitoring. In all such cases, it is imperative that a cooperative framework is established between and amongst the relevant authorities to avoid duplication of efforts amongst them, ease regulatory burden of the overseen entities and avoid and minimise any potential regulatory arbitrage.

It is usually the case that in these situations, a Memorandum of Understanding is entered into by the regulators involved clearly outlining the roles and responsibilities of each regulator. It also identifies areas of mutual cooperation in terms of sharing of information, data and reports and coordinating any crisis management situations. Thus, each authority should have well-defined responsibilities and specific tools to carry out the responsibilities, assigned to it under its regulatory mandate.

In addition, it is also critical to note that the regulators should establish a forum for interaction with all the payment system stakeholders, as a consultative and collaborative approach for successful payment system modernization. In several countries, central banks as payment system overseers have been entrusted with the responsibility to set up and lead the NPC, with a view to creating a safe, sound and efficient national payment system that meets the evolving needs of the various stakeholders while preserving the safety of their financial transactions. Implementation of industry-wide initiatives require enlisting the support of all payment system stakeholders, to ensure a successful buy-in. Accordingly, in many countries a permanent National Payment Council (NPC) has been established in which all the relevant sectoral regulators (central bank, securities regulator, banking supervisor, telecom authority), the Government (as a major user of the payment system) are represented along with all other payment system stakeholders (banks and non-banks as participants and payment system operators and providers), and consumer organisations. The NPC serves as the forum for such cooperation and collaboration.

The NPC in many countries is tasked with preparing a strategic and holistic action plan with defined timelines for the modernization and development of payment and settlement systems in line with international standards. To this end, specific taskforces of the members are constituted to work on issues related to payment systems, such as

legal and regulatory matters; IT issues; devising plans to leverage existing payment infrastructure to promote retail electronic payment products; introducing interoperable e-money products; promoting online payments through the internet and mobile with adequate security measures; deepening the PoS infrastructure; rationalizing the fee structure; consumer protection issues, etc. It should however be noted that the role of NPC is to act only as a consultative body, and not as a decision-making body.

4 Defining and establishing regulatory mandates – two models

Two international models of regulatory mandates covering the NPS are presented below. In both the models, more than one regulator is involved for different aspects related to the NPS. In Model 1, the examples of Germany and Luxembourg are presented under the overarching EU framework; and in Model 2, the example of the regulatory structure in Turkey is outlined. In both the Models, it should be noted that the authorities have taken into account the strides in technology and entry of non-banks into the payments arena and have framed their regulatory structures outlining the roles of each individual regulator based on their respective legal mandates, in the light of these developments.

4.1 Model 1 – Germany

In Germany, the Deutsche Bundesbank is responsible for the oversight of all payment and settlement system inclusive of payment instruments and it carries out this oversight in consonance with the ECB oversight framework and relevant national laws. The legal basis for oversight activities is enshrined in Article 127 (2) of the Treaty on the Functioning of the European Union and Article 3.1 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (Statute of the ESCB), under which the ESCB is inter alia mandated “to promote the smooth operation of payment systems”¹⁴. Article 22 of the ESCB Statute provides an additional legal basis. According to this, the ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound payment and settlement systems within the currency union and with other countries.

The Bundesbank not only acts as an operator of payment systems, but is also entrusted with the task of oversight. This is reflected in section 3 of the Bundesbank Act (Gesetz über die Deutsche Bundesbank) which states that the Bundesbank “shall arrange for the execution of domestic and cross-border payments and shall contribute to the stability of payment and clearing systems.”¹⁵ Its oversight activities are focused on financial market infrastructures, payment instruments and critical service providers for infrastructures and banks. Amongst other aspects related to payment instruments, the security features of payment instruments, such as payment cards, credit transfers, direct debits and e-money, also forms a part of Bundesbank’s oversight activities.

¹⁴ See https://www.bundesbank.de/Navigation/EN/Tasks/Payment_systems/Oversight/oversight.html

¹⁵ See https://www.bundesbank.de/Navigation/EN/Tasks/Payment_systems/Oversight/oversight.html

In terms of section 8 (1) of the Payment Services Supervision Act (PSSA)¹⁶, any institution wishing to provide payment services as a payment institution in Germany, needs written authorization from the Federal Financial Supervisory Authority (BaFin). The same requirement is applicable to e-money institutions pursuant to section 8a of the PSOA. The provision of payment services is included in the license to conduct e-money business.

Further, the PSSA in section 1 defines payment service providers and payment services. Sub-section 2 of section 1 defines payment services and sub-section 10 (7) excludes “payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses or central banks and other participants of the system, and payment service providers” from the ambit of payment services”. Read with the relevant statutes (Bundesbank Act, ESCB statute and the ECB statute), it is evident that the Bundesbank is charged with the oversight of all the activities excluded from the ambit of BaFin under sub section 10 (7) of the PSSA. The provisions in the respective statutes as indicated above clearly establish the respective regulatory mandates of the Bundesbank and the BaFin.

Since the PSSA coming into force, these institutions have been legally defined as two categories of payment service providers. As defined in section 1 (2) of the PSSA, payment services comprise: (i) deposit and withdrawal transactions; (ii) payment transactions in the form of direct debits, credit transfers and card payments (excluding the granting of credit payment transactions involving the granting of credit); (iii) payment authentication transactions; (iv) digital payment transactions; and (v) money transmission services.

As part of the licensing procedure, both groups of institutions are required to submit, a business model, a business plan with a budget plan for the first three financial years and a description of the measures required to fulfil the security requirements of section 13 of the PSSA. Initial capital requirements are different for payment institutions and e-money institutions¹⁷.

4.1.1 Cooperation between the Bundesbank and BaFin

The cooperation between Bundesbank and BaFin is defined by the PSSA Act and the Banking Act¹⁸. Section 3 (3) of the PSSA enjoins upon BaFin and the Deutsche Bundesbank to work together in accordance with PSSA and states that section 7 of the Banking Act shall apply accordingly. Section 7, sub-section 3 of the Banking Act states that “BaFin and the Deutsche Bundesbank shall exchange observations and findings that are necessary for the performance of their respective functions”; while section 4 authorizes sharing of data between both the regulators including access to each other’s data bases for discharging their regulatory functions.

¹⁶ https://www.BaFin.de/SharedDocs/Downloads/EN/Aufsichtsrecht/dl_zag_en.pdf?__blob=publicationFile&v=2

¹⁷ https://www.bundesbank.de/Navigation/EN/Tasks/Banking_supervision/Payment_institutions/payment_institutions.html

¹⁸ https://www.BaFin.de/SharedDocs/Downloads/EN/Aufsichtsrecht/dl_kwg_en.pdf?__blob=publicationFile&v=3

4.2 Model 1 – Luxembourg

The Banque centrale du Luxembourg (BCL), as a member of the Eurosystem, has the mission to promote the smooth functioning of payment and settlement infrastructures. The BCL's mission is stipulated in the national law of 23 December 1998 as amended and in particular articles 2 (5), 27-3 and 34 (1). The BCL's mission is in conformity with the article 127 (2) and (5) of the Treaty of the Functioning of the European Union. The BCL is charged with ensuring the efficiency and safety of payment systems and securities settlement systems, as well as the safety of payment instruments¹⁹. In this context, the BCL adopted a regulation²⁰, which specifies the scope of its oversight mission, the general framework and the means by which it carries out oversight activities.

The second regulator in Luxembourg, the Commission de Surveillance du Secteur Financier (CSSF) supervises, regulates, authorizes, informs, and, where appropriate, carries out on-site inspections and issues sanctions, with regard to payment service providers (which include payment and electronic money institutions). Payment institutions and electronic money institutions are governed by the law of 10 November 2009 on payment services (“the PSL”)²¹. Payment services are defined in Article 1(38) of the PSL as “any business activity performed on a professional basis listed in the Annex”. Electronic money is defined in Article 1(29) of the PSL. Payment services are listed in the Annex to the PSL.

No payment institution or electronic money institution may be established in Luxembourg without holding a written authorization from CSSF (Articles 6 and 24-2 of the PSL). The entity submits a formal application to the CSSF, including all the documents and information required using the relevant application forms. The entity makes a presentation on the project to the CSSF. The CSSF then carries out a detailed analysis of the application and having been satisfied, issues a letter authorizing the applicant to transmit the application file to the competent Minister. After the authorization has been granted, the authorized company is published on the official register maintained by the CSSF²².

4.2.1 Cooperation between BCL and CSSF

The cooperation between BCL and the CSSF is governed by the relevant provisions of the Organic law of the Central Bank of Luxembourg, Law of 23 December 1998 (as amended –CBL law)²³ and the Law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems (PS law).²⁴

Article 2 (5) of the CBL law, states that CBL and CSSF shall cooperate and coordinate with each other to ensure the safety and efficiency of payment systems and

¹⁹ See http://www.bcl.lu/en/payment-systems/surv_sys/cadre_juridique/index.html

²⁰ http://www.bcl.lu/en/Legal-Framework/documents_national/regulations/_reglements_de_la_bcl/2016_21/index.html

²¹ <http://www.cssf.lu/en/supervision/payment-institutionselectronic-money-institutions/>

²² <https://www.cssf.lu/en/supervision/payment-institutionselectronic-money-institutions/authorisation/>

²³ http://www.bcl.lu/en/Legal-Framework/documents_national/loi_organique/loi_list/organic_law_1-April-2015.pdf

²⁴ http://www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/Lois/L_101109_psd_eng_upd_211212.pdf

securities settlement systems, as well as the safety of payment instruments. Such cooperation will be based on agreements between the two regulators based on their individual mandates as specified in the relevant statutes. Article 27 (3) authorizes the CBL to undertake on-site visits as part of its oversight activities in coordination with CSSF; while Article 33 (2) permits sharing of data between the two regulators without any prejudice to professional secrecy obligations.

In terms of Article 33 (1) of the PS law, the CSSF is mandated to cooperate with CBL for enabling it to discharge its functions as an oversight authority. Article 33 (2) permits the CSSF to exchange information with CBL as the overseer for payment and settlement systems in Luxembourg.

4.3 Model 2 – Turkey

In Turkey, the Türkiye Cumhuriyet Merkez Bankası, (the Central Bank of the Republic of Turkey – CBRT), has regulatory and oversight responsibility for payment and securities settlement systems. The banking supervisor, the Banking Regulation and Supervisory Agency (BRSA), regulates payment service providers which include commercial banks, payment institutions and electronic money institutions, and all payment instruments including cards.

The Law on the Central Bank of the Republic of Turkey²⁵ No. 1211, and the Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions²⁶ No. 6493, designate and grant powers to CBRT to regulate, oversee and act as the licensing authority for the payment and securities settlement systems in Turkey. Law No. 6493, provides CBRT with the powers to grant licenses (Article 5); and grants oversight powers over such licensed systems (Article 8).

Accordingly, the main objective of the CBRT is to ensure “safe, uninterrupted, efficient and effective functioning of the systems.”²⁷ In pursuance of this objective, the CBRT:

- (i) Issues regulations, which are in compliance with international standards;
- (ii) Performs oversight of the systems in order to ensure their compliance with national and international regulations and standards such as the “Principles for Financial Market Infrastructures”;
- (iii) Cooperate with the authorities, which are responsible for supervision of the financial system, the system operators and the system participants.

The CBRT is thus responsible for leading all initiatives related to payment and securities settlement systems, operating the core systems, and overseeing all payment and securities settlement systems in Turkey.

The Banking Regulation and Supervisory Agency (BRSA), was established in June 1999 according to Banks Act No. 4389 and began to operate in August 2000.

²⁵[http://www.tcmb.gov.tr/wps/wcm/connect/94d352d1-0d45-45a9-99c7-](http://www.tcmb.gov.tr/wps/wcm/connect/94d352d1-0d45-45a9-99c7-b64eab088e09/Law.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE94d352d1-0d45-45a9-99c7-b64eab088e09)

[b64eab088e09/Law.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE94d352d1-0d45-45a9-99c7-b64eab088e09](http://www.tcmb.gov.tr/wps/wcm/connect/94d352d1-0d45-45a9-99c7-b64eab088e09/Law.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE94d352d1-0d45-45a9-99c7-b64eab088e09)

²⁶ https://www.bddk.org.tr/WebSitesi/english/Legislation/129166493kanun_ing.pdf

²⁷ <http://www.tcmb.gov.tr/wps/wcm/connect/TCMB+EN/TCMB+EN/Main+Menu/PAYMENT+SYSTEMS/Objectives+and+Policies>

According to Banking Law²⁸ No. 5411, the role of BRSA is to establish confidence and stability in financial markets, the sound operation of the credit system, foster the development of the financial sector, and protect the rights and interests of depositors. In this regard, the responsibilities of BRSA are three-fold: (i) regulate, monitor and supervise banks and financial holding companies, as well as leasing, factoring and financing companies, and ensure the enforcement of their regulations; (ii) become member of international financial, economic and professional organizations in which domestic and foreign equivalent agencies participate, to sign memorandum of understanding with the authorized bodies of foreign countries regarding the issues that fall under the Agency's duty field; and (iii) fulfil other duties assigned by the law.

The Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions No. 6493, and the bank cards and credit cards law²⁹, recognize and grant powers of regulation and supervision to BRSA over payment institutions, electronic money institutions and payment instruments including cards. Law no. 6493, provides powers to BRSA to grant permission to a payment institution to offer payment services (Article 14); to an electronic money institution (Article 18); conduct supervision over payment and electronic money institutions (Article 21); power to enforce sanctions, undertake investigations and launch legal proceedings (Article 27).

In addition, all entities intending to establish a card system, issue cards, enter into agreements with merchants, exchange information, and engage in clearing and settlement activities for card based transactions in Turkey, are required to obtain a license from the BRSA in terms of Article 4 of the bank cards and credit cards law. The law provides BRSA with the necessary powers to regulate and supervise the cards market and also has provisions for consumer protection.

The Capital Markets Board (CMB), is the regulatory and supervisory authority for the capital markets. The Borsa Istanbul (BIST) is the only securities exchange and Merkezi Kayit Kurulusu (MKK) functions as Turkey's central securities depository (CSD) and registrar of dematerialized corporate securities. Capital market trades conducted over BIST are settled and cleared by the Istanbul Settlement and Custody Bank (Takasbank). Takasbank is licensed as a non-deposit-taking sector-specific investment bank. Takasbank is regulated and supervised by the BRSA. However, the CMB and CBRT also oversee Takasbank: as CCP and TR by the CMB; and as SSS by the CBRT.

4.3.1 Cooperation between regulators in Turkey

Law 6493, outlines the cooperative framework between CBRT and BRSA. Article 15, states that the BRSA should consult the CBRT while issuing a license to a payment institution or an electronic money institution, and inform the CBRT while revoking and terminating a license in terms of Articles 16 and 17. Article 26, provides for

²⁸ Banking Law No. 5411, https://www.bddk.org.tr/WebSitesi/english/Legislation/14905banking_law_december_2013.pdf. The Banks Act No.4389 has since been abolished.

²⁹ <https://www.bddk.org.tr/WebSitesi/english/Legislation/8917bankcardsandcreditcardslaw.pdf>

cooperation and information exchange between BRSA and CBRT with regard to the enforcement of the provisions of the law in so far as they are related with the payment and electronic money institutions. Further, Article 29 allows for joint supervision and audit of card companies by the BRSA and CBRT. In addition, Article 30 allows for information exchange between the BRSA and CBRT for implementing and enforcing the provisions of the law.

The legal basis for CMB's cooperation with the CBRT is derived from Article 128 (1-ç) of the CML that gives the duty to exchange information and cooperate in any manner with other financial regulatory and supervisory institutions in order to ensure financial stability or fulfil the requirements of national or international legislation to the CMB.

The CBRT, BRSA and CMB discuss and cooperate with other authorities regarding specific issues under the Financial Stability Committee (FSC). This committee is primarily responsible for financial stability and systemic risk. The FSC provides the coordination for the cooperation among relevant authorities with respect to FMI's in Turkey. The committee comprises of the heads of the BRSA, the CMB, the CBRT, Saving Deposits Insurance Fund, and the Undersecretariat of Treasury. The chair of the FSC is the Deputy Prime Minister of Turkey Responsible for Economy.

4.4 Comparison of the two models

In both the models, the respective regulatory domains are clearly defined with overlaps if any which are recognized and addressed in the relevant applicable statutes.

In the case of Model 1 (Germany and Luxembourg), the central bank is responsible for the oversight of payment and settlement systems including payment instruments, while a different regulator is responsible for authorizing, licensing and supervising payment service providers. Model 2 in Turkey is a variation of Model 1 in so far as regulating payment instruments is concerned with the banking supervisor being entrusted with this task and not the CBRT. However, in both the models, the respective central banks are the overseers for payment and settlement systems.

In case of both the models, the aspect of cooperation between the regulators is clearly emphasized and laid down in the respective laws. The case studies above provide examples of cooperation ranging from: (i) consultations at the time of licensing a payment service provider; (ii) conducting joint on-site inspections; (iii) sharing of information and data; and (iv) coordination of crisis management.

5 Conclusion

The NPS being a critical pillar of financial stability, the safe and efficient functioning of the NPS is very critical for continued financial stability. The complexity of the NPS has evolved over the years, especially with the advent of technology and the entry of non-bank providers of payment services and operations. This has created newer

challenges in carrying out oversight over the NPS by the relevant authorities including the central banks.

These new developments have brought an urgency to review, revisit, and reorient existing policy objectives. The large-scale shifts being witnessed in the area of retail payments whether in terms of newer non-bank providers, payment methods or innovative technologies, outline the need for increasing competition while ensuring consumer protection and financial stability. Where certain aspects of the NPS are regulated and overseen by a regulator other than the central bank, the issue gains more criticality and underscores the need to quickly evolve and operationalise a sound framework of cooperation between the authorities for the safe, sound and efficient functioning of the NPS in a country.

It is evident from the above, that there is no one size fits all approach while carrying out oversight over the NPS in a country. The powers and responsibilities of the relevant authorities over different facets of the NPS are a function of their respective mandates. While, this being so it is essential that the mandates of the individual regulators involved are fully captured and reflected in a framework of cooperation and collaboration in developing a sound and risk-based supervisory, regulatory and oversight framework for the NPS as a whole, in line with international best practices and standards. Going forward, where a multiplicity of regulators is involved, it is a best practice to have a formal arrangement in the form of a Memorandum of Understanding between them to avoid regulatory overburden and avoid and minimise any regulatory arbitrage. Adopting such an approach, would enable the NPS to flourish by embracing innovations and in providing faster, efficient, safer and cheaper payment services to the end-users in the economy.