EMIR and ESMA Regulations: procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs

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OPINION OF THE EUROPEAN CENTRAL BANK

The ECB has received requests for consultation from the Council of the European Union and the European Parliament on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of central counterparties (CCPs) and requirements for the recognition of third-country CCPs.

The ECB supports the initiative set out in the Commission's proposal to enhance the role of the relevant members of the ESCB, as central banks of issue of the currencies of financial instruments cleared by CCPs, in the process for the supervision of Union CCPs and the recognition of third-country CCPs.

It supports the proposal that the Eurosystem, as the central bank of issue of the euro, should play a more meaningful role with respect to Union and third-country CCPs.

The ECB stresses that significant developments, both globally and in Europe, should increase the risks presented by CCPs to the smooth operation of payment systems and the implementation of the single monetary policy.

First, central clearing has become increasingly cross-border in nature and systemically important.

Second, the withdrawal of the United Kingdom (UK) from the Union will have a major impact on the Eurosystem's ability to carry out its tasks as central bank of issue for the euro. At present, certain CCPs established in the UK clear significant volumes of euro-denominated transactions.

The Eurosystem's ability to monitor and manage the risks posed by UK CCPs will be adversely affected if UK CCPs are no longer subject to the regulatory and supervisory framework for Union CCPs under Regulation (EU) No 648/2012 of the European Parliament and of the Council.

The proposed regulation envisages an enhanced role for the Eurosystem as central bank of issue for the euro in the framework under Regulation (EU) No 648/2012. In order to ensure that the Eurosystem can carry out this role, it suggested that the **ECB be granted regulatory competence over clearing systems for financial instruments**, in particular CCPs, by means of an amendment to Article 22 of the Statute of the ESCB.

The ECB makes the following specific observations:

The requirement to obtain the consent of the central bank of issue regarding certain draft decisions: the ECB strongly welcomes the role envisaged for the central banks of issue under the proposed regulation, which will enable the members of the ESCB to have meaningful and effective involvement in

decision-making on matters of direct relevance to the fulfilment of the basic tasks of the ESCB under the Treaties, and the achievement of its primary objective of maintaining price stability. The ECB has a number of comments in this regard.

First, where the proposed regulation clarifies that the consent of the central bank of issue must be obtained 'in respect of any aspect of those decisions relating to the carrying out of their monetary policy tasks', it should be emphasised that this phrase is intended to clarify the monetary policy context in which the central bank of issue carries out its role and the purpose the role fulfils. Moreover, with regard to which draft decisions should be subject to the consent of the central bank of issue, the ECB considers that the proposed regulation should ensure the involvement of the central bank of issue regarding certain further key aspects of CCP risk management. The ECB considers that in relation to both Union and third-country CCPs, the consent of the central bank of issue should also be required regarding draft decisions taken in respect of the CCP's margin requirements.

Review and assessment: The ECB underlines that the review and evaluation process, as amended by the proposed regulation, will fulfill the objective of ensuring that CCPs are in a permanent position to comply with Regulation (EU) No 648/2012. According to the ECB, an important corollary of the requirements of the Regulation would be the consultation of the issuing central bank during the review and appraisal process, when it is considered necessary by the competent authority to ensure that the said bank can assume the role assigned to it by the proposed regulation.

Review and evaluation: the ECB underlines that the review and evaluation process, as amended by the proposed regulation, will serve the key purpose of ensuring that CCPs comply with Regulation (EU) No 648/2012. According to the ECB, the consultation of the central bank of issue in the review and evaluation process, where deemed necessary by the competent authority to ensure that the central bank of issue can fulfil its role under the proposed regulation, would be an important corollary to the requirements.

ECB advisory role: the ECB considers that it should be consulted in due time on any draft Union acts, including draft delegated and implementing acts, falling within its fields of competence.

Cooperation and exchange of information between the CCP Executive Session and the supervisory colleges: the ECB notes that the CCP Executive Session does not include all members of the supervisory colleges, and does not include the European Systemic Risk Board (ESRB).

In order to ensure that the ESRB and the supervisory college members which are not also members of the CCP Executive Session have all the relevant information necessary for the purpose of carrying out their tasks, it is crucial that there is an obligation to exchange information between the CCP Executive Session and the ESRB and the other supervisory college members which are not members of the CCP Executive Session.

The ECB as a non-voting member of the ESMA Board of Supervisors: the ECB considers that it is also vital for the ECB be included as a non-voting member of the ESMA Board of Supervisors, to ensure effective cooperation, coordination and exchange of information between central banks and supervisory authorities, and to ensure that the guidelines, recommendations and other practical instruments and convergence tools developed by the ESMA Board of Supervisors take into account the ECB's perspective and expertise.

Interaction with the proposed regulation on a framework for the recovery and resolution of central counterparties: the ECB would see merit in promoting the consistency and effective interaction of recovery and resolution plans across CCPs, and in monitoring and mitigating their aggregate risk implications for financial stability in the Union.