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Euroclear response to the consultation by CESR on the preliminary draft technical advice on access and interoperability arrangements

Euroclear is pleased to be given the opportunity to give its views on the preliminary draft technical advice issued by CESR on December 18, 2008. All Euroclear entities [1] have signed the Code of Conduct on Clearing and Settlement and the related Access and Interoperability Guideline. Some of the entities of Euroclear group are requesting or receiving parties in the frame of the Code's access and interoperability and have therefore a keen interest in the CESR analysis on regulatory arrangements that could affect the implementation of these requests.

We welcome the CESR work and believe that CESR has delivered substantial input into the debate on the existence (or not) of regulatory barriers to enhanced integration between trading, clearing and settlement across the EU. We agree with CESR's breakdown of the issues in 11 key questions. The answers to these questions give an unprecedented insight into the regulatory requirements related to post-trading services in the EU. We however judge that we are not best placed to provide input to the collection of the factual answers to the respective questions. Our comments therefore, focus on the recommendations that CESR has formulated on page 5 of the advice.

We agree with CESR's advice on the way forward in the short-term. More specifically, we are of the view that the adoption of the ESCB/CESR recommendations and a related strong political endorsement by the EU institutions for their consistent implementation would bring a de-facto harmonised EU framework in a rapid and adequate manner. Cooperation between securities regulators on the basis of the recommendations and within the frame of their domestic legal framework, including where necessary, by MoUs between relevant regulators, is the correct way forward and should be sufficient to unblock the short-term bottlenecks. Unless there is evidence that the EU institutions cannot come to a strong political endorsement of the use of the ESCB/CESR recommendations, we do

[1] Euroclear group comprises the international central securities depository Euroclear Bank, based in Brussels, as well as the national central securities depositories (CSDs) Euroclear Belgium, Euroclear France, Euroclear Nederland, Euroclear UK & Ireland and NCSD, the CSD for Finland and Sweden.

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not believe that any other measures (such as the implementation of a Directive on post-trade services) should be envisaged as the longer term objective. We do believe however, that the recommendations once finalised should be revised to ensure that divergences between national rules are addressed by the recommendations. This corresponds to the views we expressed in response to the CESR call for evidence on the same subject in September 2008.

We also believe that in parallel some reflection is needed on the way MiFID sets out access to post-trade services. MiFID articles 34 and 35 (and equivalent national rules) may well give rise to these regulatory barriers. These articles imply that it is the supervisory authority of the Member State on whose territory the regulated market/MTF is located that needs to agree on the assignment of a settlement system in another Member State. We are not convinced that this is the most adequate way to ensure freedom of choice of the settlement location. We would suggest that the supervisory authority of the Member State on whose territory the settlement system is located should assess whether the addition of settlement transactions from a regulated market/MTF from another Member State would facilitate the smooth and orderly functioning of the settlement system. Indeed, any risk that would materialise would impact the Member State of the settlement system, not the one of the regulated market. We are ready to participate in further analysis on this topic.

Contacts

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