



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 4 February 2009**

**at the request of Magyar Nemzeti Bank**

**on three draft regulations on the terms and conditions and the operating rules of organisations providing central securities depository, clearing house and central counterparty activities**

**(CON/2009/9)**

### **Introduction and legal basis**

On 7 January 2009 the European Central Bank (ECB) received a request from Magyar Nemzeti Bank (MNB) for an opinion on three draft MNB regulations: the draft regulation on the central securities depository's terms and conditions and operating rules, the draft regulation on the terms and conditions and operating rules for organisations providing clearing house activities under the Law on the capital market, and the draft regulation on the terms and conditions and operating rules of organisations providing central counterparty activities under the Law on the capital market (hereinafter together 'the draft regulations').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the fifth indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions<sup>1</sup>, as the draft regulations relate to payment and settlement systems. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

### **1. Purpose of the draft regulations**

Until its very recent re-structuring on 1 January 2009, as a specialised credit institution KELER Zrt. acted not only as a clearing house (CH) and a central securities depository (CSD) operating the securities settlement system in Hungary, but also as a central counterparty (CCP). In the course of 2002 and 2003, the ECB prepared a comprehensive assessment of KELER Zrt. along with assessments of the central securities depositories and settlement systems of all other countries joining the European Union in 2004<sup>2</sup>. According to the assessment published in 2004, the performance of the CSD function and the CCP function by a single legal entity presented certain risks, in particular if a CCP were to take a principal risk equal to or exceeding its capital base, using up its own funds if this risk were to be crystallised. The

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> *Assessment of accession countries' securities settlement systems*, January 2004. Available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

consequent insolvency of the CCP could also disrupt the CSD's functioning. Consequently, the ECB recommended allocating the CSD and CCP functions to independent legal entities.

Furthermore, in its Opinion CON/2006/1 of 4 January 2006 at the request of Magyar Nemzeti Bank on a draft regulation on the general terms and conditions and operating rules of organisations providing clearing house activities, the ECB drew the consulting authority's attention to its recommendation for creating for KELER 'a legal structure which prevents any spillover of risks from the entity providing CCP services to the entity providing securities settlement services'. Hence the ECB suggested amending the draft regulation to take account of this recommendation, among other things by separating the legal provisions governing the general terms and conditions and operating rules for CCP and for CSD functions.

In view of the risks involved and at the ECB's recommendation, the MNB supported the idea of separating KELER Zrt.'s CCP and CSD functions into legally independent companies. Under the new regime, a newly established company, KELER KSZF Kft., acts as the CCP, while KELER Zrt. retains its CSD and CH functions. The amendments to Law CXX of 2001 on the capital market in 2007 served as the basis for separating these functions.

The sound and smooth operation of the Hungarian securities clearing and settlement system is of utmost importance for ensuring the efficient implementation of monetary policy, the smooth operation of payment systems and financial markets, and thus financial stability, and the draft regulations will regulate the terms and conditions and the operating rules for the organisations performing CSD, CH and CCP functions.

According to the general provisions of the draft regulations, the Rules 'shall define the parties' rights and obligations as well the procedures in such a way that the legal, financial and operational risks ... are clear and unambiguous'. The draft regulations include certain definitions, such as those for a securities settlement system, liquid assets, etc. The draft regulations lay down various general rules, such as rules for granting access and terminating business relationships and the financial and technical requirements for participation, etc. They also govern certain risk management measures, such as the management of principal risk related to securities transactions, securities lending, the market, futures and options, and the clearing members and the emergency-handling rules, etc. The draft regulations also lay down the basic principles for determining fees. It is proposed that the draft regulations should enter into force on 28 February 2009.

## **2. General observations**

2.1 The ECB welcomes the allocation of the CSD and the CCP functions to independent legal entities to avoid spill-over risks. It understands that the allocation process has been completed and the new scheme started operating on 1 January 2009.

2.2 In the opinion of the ECB, the draft regulations follow, as far as possible, the legal rules and standards established by the Eurosystem for payment and settlement systems.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 4 February 2009.

[signed]

*The President of the ECB*

Jean-Claude TRICHET