



OPINION OF THE EUROPEAN CENTRAL BANK

of 17 August 2011

on the introduction of omnibus accounts in the legal framework for clearing and settlement systems

(CON/2011/63)

Introduction and legal basis

On 19 July 2011, the European Central Bank (ECB) received a request from the Polish Ministry of Finance for an opinion on a draft law amending the Law on trading in financial instruments and certain other laws (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the fifth and sixth indents 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 provisions¹, as the draft law relates to payment and settlement systems and to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 law

- 1.1 The draft law amends the Law of 29 July 2005 on trading in financial instruments² and several other laws with a view to extending the securities registration system in Poland to omnibus accounts, to be opened and operated, within the Polish central securities depository³ (CSD) or within a system for the registration of securities operated by Narodowy Bank Polski, for the benefit of eligible institutions from outside Poland.
- 1.2 Under the current securities registration system⁴, foreign investors may only hold Polish securities on a dedicated securities account opened in their own name by a local intermediary or KDPW⁵.

¹ OJ L 189, 3.7.1998, p. 42.

² Consolidated text published in *Dziennik Ustaw* (Dz. U) of 2010 No 211, item 1384.

³ As operated by the national depository for securities (Krajowy Depozyt Papierów Wartościowych (KDPW)) or KDPW's subsidiary to which it delegated the operation of the central securities depository under Article 48(7) of the Law on trading in financial instruments.

⁴ The current set-up is characterised by two levels of records. The first level is deposit accounts maintained by KDPW for investment firms, custodian banks and other entities authorised to maintain securities accounts, and the second level is securities accounts, maintained by the holders of deposit accounts (and to a limited extent also by KDPW), where the identity of the holders of specific securities can be established (see explanatory memorandum to the draft law, p. 1).

The introduction of omnibus accounts will remove the additional administrative burden and costs incurred by foreign investors as a result of this restriction by offering other holding options. In particular, foreign institutions holding an account with a foreign CSD will have the possibility of executing transactions in Polish financial instruments through an omnibus account of that foreign CSD with KDPW, which will foster the establishment of operational links between KDPW and foreign CSDs⁶.

- 1.3 To this end, the draft law defines, *inter alia*: (i) the concept of omnibus accounts⁷; (ii) eligible omnibus account holders and operators⁸; and (iii) reporting obligations for omnibus account holders⁹. In addition, the draft law accordingly amends legal provisions contained in laws other than the Law on trading in financial instruments, such as taxation provisions, to enable the full integration of the omnibus account in the Polish legal framework¹⁰.

2. Specific observations

- 2.1 The ECB understands that the adoption of the draft law will, as one of its outcomes, remove a legal barrier preventing access by KDPW to TARGET2-Securities (T2S) to be offered on the basis of the Eurosystem platform. Specifically, the proposed Article 8a(2)(1) of the Law on trading in financial instruments provides that ‘legal persons or other entities established outside Poland which discharge duties in relation to central registration of securities’ will be among the entities eligible to hold omnibus accounts with KDPW. The ECB understands that this provision will enable KDPW to open omnibus accounts for the benefit of foreign CSDs. The ECB welcomes this alignment of the Polish legal framework with one of the T2S eligibility criteria, requiring the participating CSDs to make each security/International Securities Identification Number for which they are an issuer CSD (or technical issuer CSD) available to other CSDs in T2S upon request¹¹.
- 2.2 The ECB also notes that to allow for KDPW’s participation in T2S, the Law on trading in financial instruments should be further adapted in the future so that it cannot be interpreted as preventing KDPW from outsourcing certain functions related to securities settlement to the Eurosystem acting

⁵ In particular, under the current set-up, foreign investors are prevented from holding Polish securities on an account with an intermediary located in the same country as the investor, the former holding the securities through an omnibus account either directly with KDPW or with an institution in Poland which holds the securities through an account opened for it by KDPW.

⁶ See explanatory memorandum to the draft law, pp. 1-3.

⁷ The draft law defines omnibus accounts as accounts in which dematerialised securities may be registered where they do not belong to the persons for whom these accounts are maintained; see Article 8a(1) of the Law on trading in financial instruments, as amended by the draft law.

⁸ The group of eligible holders of omnibus accounts includes, *inter alia* (subject to further qualifications): foreign central securities depositories, foreign investment firms and brokerage houses, as well as credit institutions outside the Union; see Article 8a(2) of the Law on trading in financial instruments, as amended by the draft law.

⁹ See Article 8b of the Law on trading in financial instruments, as amended by the draft law.

¹⁰ See in particular Article 4 of the draft law amending the Law of 26 July 1991 on personal income tax (Dz. U. of 2010 No 51, Item 307); Article 5 of the draft law amending the Law of 15 February 1992 on corporate income tax (Dz. U. of 2011 No 74, Item 397).

¹¹ See in particular Article 15(1)(c) of Guideline ECB/2010/2 of 21 April 2010 on TARGET2-Securities (OJ L 118, 12.5.2010, p. 65).

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as operator of the T2S platform. Particular attention in this regard needs to be paid to Article 48(7) and Article 150(1)(13a) of the Law on trading in financial instruments, which may be interpreted as allowing KDPW to transfer information related to securities settlement solely to its subsidiaries to which it has delegated operation of the central securities depository¹². The ECB recommends adequately amending or supplementing the above provisions to allow KDPW to outsource certain securities settlement functions to a third-party service provider, and to transfer relevant information to them.

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

Done at Frankfurt am Main, 17 August 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

¹² See also paragraph 4 in Opinion CON/2008/20 and paragraph 2.2 in Opinion CON/2009/55. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.