



EUROPEAN CENTRAL BANK

EUROSYSTEM

ECB-PUBLIC

## **Report of the ESCB on the need for any measure to facilitate the access of CCPs to central bank liquidity facilities**

### **(Review of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (the European Market Infrastructure Regulation – EMIR) as foreseen under Article 85)**

Under Article 85(1)(a) of *Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories* (EMIR), the Commission must assess, in cooperation with the members of the ESCB, the need for any measure to facilitate the access of CCPs to central bank liquidity facilities.

This report presents the contribution of the ESCB on this issue.

At present, EMIR does not set requirements or conditions with regard to the provision of central bank liquidity facilities to CCPs; neither does it specify the central bank liquidity facilities to which it refers. Rather, it remains for each central bank to determine for itself which facilities (e.g. credit, deposit and settlement services) it wishes to offer to CCPs (and other market infrastructures).

The introduction of any measure concerning central bank facilities in EMIR would have to respect the principle of independence of central banks when they perform their statutory tasks, as set out in Article 130 of the Treaty on the Functioning of the European Union (TFEU) and Article 7 of the Statute of the ESCB or otherwise under national provisions. This implies that members of the ESCB must retain the right to provide access to central bank facilities, including access to central bank credit, at their own discretion, as recognised by Article 85 of EMIR. The members of the ESCB must be free to decide whether or not to provide CCPs with access to central bank facilities, and to define the eligibility conditions these CCPs must meet in order to benefit from such facilities, in accordance with their mandates and in pursuance of their statutory tasks.

According to Article 18(1) of the ESCB Statute, the members of the ESCB may provide central bank credit in order to achieve the objectives of the ESCB and to carry out their tasks. In the Eurosystem, such operations are carried out in accordance with the general principles established by the ECB<sup>1</sup>. National provisions equivalent to Article 18 of the ESCB Statute are in place for members of the ESCB in Member States whose currency is not the euro. While central bank money does play a key role as a settlement asset, central banks open settlement accounts or otherwise provide liquidity facilities based on the objectives of the ESCB and subject to their own policies<sup>2</sup>. For the members of the ESCB, the following basic tasks could be relevant regarding the provision of central bank credit to

---

<sup>1</sup> See Article 18(2) of the ESCB Statute.

<sup>2</sup> See, for example, CPSS, *The role of central bank money in payment systems*, 2003, p. 3 and p. 8, available at <http://www.bis.org/publ/cpss55.pdf>

CCPs (see Article 127(2) TFEU and equivalent national provisions): the definition and implementation of monetary policy and the promotion of sound payment systems. Moreover, in line with Article 127(5) TFEU, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system.

The ESCB believes it is important for national competent authorities to continue to examine and, where appropriate, seek improvements with respect to EU CCP liquidity risk management, namely in light of regulatory developments regarding stress testing (in the context of relevant CPMI-IOSCO work) and recovery and resolution (in the context of relevant EU legislation, CPMI-IOSCO and FSB work). However, and without prejudice to the above-mentioned legal aspect of central bank independence, it does not consider that introducing requirements in EMIR regarding CCP access to central bank facilities would be the appropriate means to address potential weaknesses, as *first*, central banks need to control the financial risk for themselves (and ultimately for their stakeholders and their currency), and *second*, an automatic right to central bank liquidity would create moral hazard on an extraordinary scale, rather than more robust liquidity risk management of CCPs authorised in the EU. **The ESCB considers that the current legal framework which allocates competence to define the conditions for access to central bank facilities to the ESCB under primary Union law is adequate for ensuring effective CCP access to central bank facilities where the concerned central banks may deem this appropriate in accordance with their mandates.**

Lastly, Article 85 of EMIR states that the input delivered by the ESCB to the Commission should take into account any result of ongoing work between central banks at Union and international level. Since the entry into force of the Regulation, no guidance has been issued at Union or international level on the possible requirements for CCP access to central bank facilities. On the contrary, it is acknowledged that the use of central bank services or credit is subject to the relevant legal framework and the policies and discretion of the relevant central bank<sup>3</sup>.

---

<sup>3</sup> See CPMI-IOSCO, Principles for financial market infrastructures, paragraph 3.9.3.