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EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

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

(CON/2006/1)

1. On 18 October 2005 the European Central Bank (ECB) received a request from Magyar Nemzeti Bank for an opinion on a draft regulation on the general terms and conditions and operating rules of organisations providing clearing house activities (hereinafter the 'draft regulation').

2. The ECB's competence to deliver an opinion is based on the second, third, 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[1], as the draft regulation contains provisions concerning means of payment, Magyar Nemzeti Bank, payment and settlement systems and rules that 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.

3. The draft regulation – in conjunction with Law CXX of 2001 on capital markets (hereinafter the 'Capital Markets Law') – sets out requirements in relation to the general terms and conditions and operating rules for organisations providing clearing house activities that may include preconditions to performing such activities while addressing, in particular, the regulation of the risk management aspects of such operating rules.

4. The draft regulation allows Magyar Nemzeti Bank to introduce requirements in relation to the general terms and conditions and operating rules applied by Hungarian securities clearing and settlement systems hereby taking into account the 'Standards for the use of EU securities settlement systems in ESCB credit operations' published by the European Monetary Institute (EMI) in 1998[2] and the 'Recommendations for securities settlement systems' published by the Committee on Payment and Settlement Systems of the central banks of the Group of Ten

1 OJ L 189, 3.7.1998, p. 42.

2 Available on the ECB's website at http://www.ecb.int/mopo/pdf/implement/assets/sssstandards1998.pdf.

countries and the Technical Committee of the International Organization of Securities Commissions (hereinafter referred to as 'CPSS-IOSCO recommendations')[3] in 2001.

5. The ECB notes that the draft regulation is based on the current framework of KELER Rt. (a central clearing house and depositary, hereinafter referred to as 'KELER'). KELER, as indicated in the explanatory memorandum provided by Magyar Nemzeti Bank to the ECB, acts as: (a) a clearing house; (b) a central counterparty (CCP); (c) a central securities depository (CSD); (d) a settlement bank for investment service providers other than banks; and (e) a registrar. In other Member States the different functions are performed by different entities subject to different requirements. Whilst it is understood that for the sake of consistency the draft regulation uses the same definitions as the Capital Markets Law, however, instead of regulating the entity's terms and conditions as such, the draft regulation could clarify the requirements for the different functions. It could also clarify whether the fact that functions involving different risks are performed by the same entity on the same platform requires additional risk control measures

6. In this respect the ECB points out that, in its publication entitled 'Assessment of accession countries' securities settlement systems' in 2004[4], it recommended 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 draft regulation may need to be amended in the future to address this recommendation, by means *inter alia* of a separate set of legal provisions governing the general terms and conditions (and operating rules) of CCP and CSD functions, respectively.

7. This distinction will also allow the identification of the standards considered relevant to assessing each function's risks. In particular, Eurosystem user standards will only apply to CSDs used in monetary policy operations and will not apply to CCPs or investment banks. On the other hand, there are two sets of CPSS-IOSCO recommendations, which will apply to CSDs (and eventually custodians) and to CCPs. It is important to note that compliance with CPSS-IOSCO recommendations may be insufficient to fully fulfil future EU oversight standards since such standards may be more demanding than the CPSS-IOSCO recommendations.

8. The ECB notes that the following definitions in Article 2 are inconsistent with those definitions in the two sets of standards (Eurosystem standards and CPSS-IOSCO recommendations) with which the draft regulation should be consistent: settlement period, delivery versus payment, usual market movements, real-time gross settlement and settlement finality. The ECB recommends using widely-accepted standard definitions as far as possible.

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3 Available on the website of the Bank for International Settlements at http://www.bis.org/publ/cpss46.pdf.

4 Available on the ECB's website at http://www.ecb.int/pub/pdf/other/ssseuacc-assessmenten.pdf.

9. Moreover, the risk management requirements in the draft regulation, due to the latter's limited scope, do not fully address Eurosystem user standards and the CPSS-IOSCO oversight recommendations regarding trade confirmation, governance, risks in cross-border links and the availability of adequate backup facilities. As a general comment, the ECB considers it advisable to comply with all the relevant Eurosystem standards and CPSS-IOSCO recommendations and finds the appropriate amendment of Hungarian legislation on the abovementioned points desirable.

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

Done at Frankfurt am Main, 4 January 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET