



PAYMENTS SYSTEM AND CURRENCY ISSUE POLICY DEPARTMENT

ESCB-CESR joint secretariat

For the attention of:

Budapest, 5th of November 2003

Elias Kazarian (ECB)
Wim Moeliker (CESR)

Dear Sirs,

Please, find enclosed consolidated comments from the Central Clearing House and Depository Ltd (KELER Rt.), the Hungarian Financial Supervisory Authority (PSZÁF) and the National Bank of Hungary (MNB) on **THE ESCB-CESR CONSULTATIVE REPORT ON STANDARDS FOR SECURITIES CLEARING AND SETTLEMENT SYSTEMS IN THE EUROPEAN UNION.**

The responding Hungarian public authorities and the infrastructure operator welcome the initiative of the ESCB - CESR to adapt the CPSS-IOSCO recommendations for EU and set demanding standard for Europe.

We do hope that ESCB-CESR can make good use of our enclosed comments in the finalisation of the document and looking forward to take part in further actions aiming at the implementation of the new set of standards.

Sincerely yours,

István Prágay
General Manager
Head of the Payments System and Currency Issue Policy Department
National Bank of Hungary

Comments of Hungarian Authorities and the CSD

- 1.) The variety of standards and recommendations¹ set by different organisations with regard to clearing and settlement of securities transactions is sometimes confusing for the public as well for the stakeholders in these the systems. Therefore, we suggest to clarify whether ESCB and CESR, respectively, will or may, in the future, monitor and oversee compliance with the recommendations and standards set by other bodies (e.g. G30) in their capacity as regulators and overseers. In our view, the new standards should be a complete set of regulatory requirements for the EU and further changes should be incorporated into this paper.
- 2.) As the Standards will not be legally binding, in order to avoid regulatory and supervisory arbitrage, we suggest a schedule be agreed upon by respective authorities on the timing of implementation and reporting on progress.
- 3.) According to paragraph 11. and 25. several standards are to be applied to "*custodians operating systematically important systems*" while addressees of Standards No. 13, 14, 15 and 17 are, among others, "*custodians with a dominant position in a particular market*". While definition of the former concept is still under elaboration, we have not found any explication for the latter. It is not clear whether these two categories are meant to be distinct or not.
- 4.) The requirement to provide sufficient information on the subjects specified in paragraph 29, in our view, should be moved from Standard (1) on legal issues to Standard (17) on transparency, since information disclosure is clearly a matter of transparency and some points are not of legal nature.
- 5.) It should be clarified that the obligation to provide information for market participants (paragraph 29.) applies solely to the domestic legal framework of a system, and it doesn't extend to the legal frameworks of foreign markets and systems, which are reachable through links supplied by a given infrastructure service provider.
- 6.) Concerning statements aiming at risk mitigation in paragraph 77, 79 and 85 under Standard 6 on CSDs, it worth noting that CSDs are often established as profit oriented joint stock companies and operates under market conditions. Due to profit constraints CSDs often seeks to serve new market segments and offer additional services, thereby incurring additional financial, legal, and operational risks. Regulators should require CSDs to incorporate adequate measures into their risk management framework in relation to these activities.
- 7.) Paragraph 78 of Standard 6 doesn't explicate how CSDs can prepare for maintaining access to CSD services even in case of insolvency of the CSD itself. In our view, also legislators have responsibility to put in place proper arrangements for these events.
- 8.) While the standards favour "functional approach" as against institutional approach, the text of the draft is not fully consistent in this respect. Standard 4 on CCPs and 6 on CSDs, as seen from their titles also, addresses basically the institutions themselves instead of the function they perform.

¹ - Standards for securities clearing and settlement systems in the European Union drafted by ESCB-CESR,
 - CPSS-IOSCO Recommendations for securities settlement systems,
 - Standards for risk management controls for central counterparty clearing activities by the European Association of Clearing Houses,
 - Global Clearing and Settlement, a Plan of Action (Group of Thirty's 20 recommendations),
 - Standards for CCP's risk management procedures under preparation by CPSS-IOSCO (mentioned in footnote under Standard 4),
 - future work of the ESCB-CESR on CCPs (mentioned in footnote under Standard 19).