



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs {COM(2017) 331 final}.

The Commission shares the Bundesrat's consideration that the consistent supervision of Central Counterparties (CCPs) is a necessary condition of an effective central clearing market. In the Commission's view, this condition applies regardless of whether a Central Counterparty which provides services in the common market is established inside or outside the Union.

The Commission therefore proposes an enhanced supervision with a greater involvement of the European Securities and Markets Authority (ESMA) and the relevant central banks of issue of the Union currencies, notably the European Central Bank.

The Commission takes seriously the concerns expressed by the Bundesrat as regards the supervisory structure for European Central Counterparties. While it shares the Bundesrat's view that the colleges established under the European Markets and Infrastructure Regulation are a valuable tool to foster interaction between the different national competent authorities, it aims for even more effective and consistent supervision and for a greater involvement of the relevant central banks of issue of the Union currencies. The Commission is convinced that the governance structure it proposes reaches that aim, but remains of course open to suggestions for improvements which could be introduced in the ongoing negotiations in the European Parliament and in the Council.

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With regard to Central Counterparties established in a third country, the Commission shares the view of the Bundesrat that the rules on the recognition of these Central Counterparties have to be measured against whether or not they safeguard the financial stability of the Union and its Member States. In particular, the Commission shares the Bundesrat's view that the possibility of refusing the recognition of a substantially systemic third-country Central Counterparties, which may lead to its establishment in the Union, is necessary to safeguard the financial stability of the Union and its Member States. The Commission also takes note of the Bundesrat's proposals for a more specific drafting of the proposed Regulation with regard to an effective European supervision of Central Counterparties established in a third-country by ESMA, to the requirements which systemically important counterparties must fulfil, to the need for adaptation periods and for consistent arrangements for substantially systemic Central Counterparties established in a third-country which establish (parts of) their clearing business in the Union. All these suggestions will inform the currently ongoing negotiations with the European Parliament and the Council.

With regard to the requests the Bundesrat already made in its Document 103/17 of 31 March 2017, the Commission would like to refer to the enhanced requirements it proposes for the recognition of third-country Central Counterparties. The proposed amendments will enable ESMA to examine, strictly and on an ongoing basis, whether the third country's regulatory framework keeps pace with EU law and its developments. The Bundesrat's request to work towards ensuring that the recognition of third-country Central Counterparties be made conditional on their being subject to an equivalent recovery and resolution framework will have to be carefully assessed, as not all third countries follow the same concept as the Commission's proposal on recovery and resolution of Central Counterparties.

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Valdis Dombrovskis
Vice-President*