



The Federation of Finnish Financial Services (FFI) represents banks, insurers, finance houses, securities dealers, fund management companies and financial employers. Our membership also includes providers of statutory insurance lines, which account for much of Finnish social security.

European Securities and Markets Authority ESMA

ESMA 2012/852

FFI RESPONSE TO ESMA CONSULTATION ON GUIDELINES FOR ESTABLISHING CONSISTENT, EFFICIENT AND EFFECTIVE ASSESMENTS OF INTEROPERABILITY ARRANGEMENTS

On 20 December 2012, ESMA launched a consultation paper on Guidelines for establishing consistent, efficient and effective assessments of interoperability arrangements. The Federation of Finnish Financial Services (hereinafter “FFI”) welcomes the opportunity to respond to this consultation as follows

1 GENERAL REMARKS

- Guidelines on interoperability arrangements are indeed an important and a complex matter that requires thorough analysis. ESMA has definitely made the right decision when it decided to postpone the publication of the guidelines from 2012 to 2013. In such an important matter, we still feel that even aiming for a publication at the end of Q1 may be too soon. ESMA should further consider delaying the publication in case the guidelines need more consideration.
- According to EMIR (EU 648/2012), ESMA should assess the possible extension of interoperability arrangements to other financial instruments than transferable securities and money market instruments by 30 September 2014. These guidelines are expected to be launched only 18 months years prior to this deadline. Taking into account that the deadline is quite soon, it would at this point be useful to partly take into account solutions that would more broadly support competitive environment.
- The FFI welcomes the tone of these guidelines as they are crucial in ensuring that the field of clearing also has a need for a true single market. ESMA should indeed keep this direction regardless of the possible, exaggerated risk claims that may be brought again into discussions. The FFI is of course of the opinion that the markets need to be safe and stable but that these arguments should not be used to preserve national monopolies.



- As in many of the current EU-level dossiers, exchange of information between competent authorities is extremely vital. For example, it is the FFI's understanding that when Nasdaq OMX Nordic was planning on opening access for interoperable CCPs (a process that was later frozen), the Nordic, Dutch, UK and Swiss regulators were working fairly closely together in assessing the arrangements.
- The FFI recommends careful balancing between safety and heaviness of the arrangements and procedures. This is crucial in ensuring that these guidelines do not direct the markets towards closed monopolies instead of creating a competitive environment as is described in EMIR and in the coming MiFIR dossier.
- In addition, one should bear in mind that a competitive CCP market is first created when the marketplaces are ready to open their trade feeds to multiple authorized CCPs. For the time being, the regulated markets seem not to be ready to support the creation of a single market in this respect. Thus an extra push from the authorities and regulators is always welcome.
- These guidelines focus on the arrangement between the CCPs only. However, the role of the marketplaces should also be incorporated into these guidelines. As stated above, they will be of key importance in determining whether principles of open access and competition are put into practice or not. One example of a guideline that should be added is a guideline ensuring that the interoperable CCPs shall create and discuss in consultation with both the marketplace and clearing members a recovery/continuity plan. This will be used in the event that one CCP is in default or facing technical problems. These situations require actions not only from interoperable CCPs but also from the marketplace. Please see Annex 1 for an example on the scenarios that may be taken into account.
- We hold it possible that tightening requirements in general may lead to a situation where CCPs need to adjust their membership requirements so that smaller participants may not be allowed to enter CCPs directly anymore as a consequence. This development contains a risk of centralization that should be taken into account. In addition, it should be ensured that participation is denied solely on risk grounds. Therefore a guideline stating that interoperability arrangements should not lead to major changes in the CCPs membership requirements would prove useful.
- Another, even more important guideline would be one that states that interoperability arrangements should not lead to charging an interoperability fee, thus indirectly forcing the markets to use marketplaces that do not provide open access.
- Finally, we welcome the transparency towards not only authorities but also CCP members in the ESMA proposal. Interoperability arrangements are such an important decision by the CCPs that the members need to be properly informed.



2 SPECIFIC COMMENTS

Guideline 1 on Legal risk – General guideline

Level of transparency should be clarified. In this guideline, it is stated that in addition to other features, the interoperability arrangement should be transparent. We would welcome a clarification on what level of transparency ESMA is looking for in this respect. In the Nasdaq OMX Nordic case we mentioned as an example above, the arrangement between the three CCPs was not transparent to the member of those CCPs.

Consultations with members are important. In this guideline, we strongly support what is stated in detailed guidelines about consulting the risk committee and clearing members. This proposal is also well in line with the EMIR level 2 standards.

Guideline 2 on Open and fair access – Detailed guidelines

Termination on risk grounds needs to be justified properly. The FFI understands the need that an interoperability arrangement may also have to be terminated on justified risk grounds. However, to ensure that these termination processes are not made too lightly, we would recommend that the CCP that wants to terminate the arrangement needs to provide justification not only to its NCA as proposed in the guidelines, but to the other NCAs responsible for the arrangement as well.

Guideline 3 on Identification, monitoring and management of risks – Guidelines regarding Arrangements involving three or more CCPs

The amount of CCPs in an arrangement should not be unduly limited. The FFI is questioning the need to separately address arrangements where three or more CCPs are involved. We believe it is enough to draft guidelines in a manner that does not pinpoint such arrangements but requires a CCP to assess the risks, requirements, etc. in the same way towards all CCPs, regardless of the amount of those in an arrangement. If these broader arrangements are to be seen as having tighter requirements, the market will be guided towards limited competition which will be only a partial opening of the internal market.



ANNEX II: Cost- benefit analysis

The implementation of these guidelines will have a cost impact also for the CCPs and their clearing members. In the cost-benefit analysis it is stated that there should be no material additional compliance costs for market participants associated with these guidelines, and that the only costs should be for regulators. The FFI disagrees because the prescribed arrangements will require a lot of analysis about the fellow-CCPs, their rules, procedures, arrangements etc. All of these come at a cost to the CCP. Traditionally, a large part of this cost will be charged, directly or indirectly, from the clearing members. Therefore it is clear that there will be a cost not only for the regulators, but also for the CCPs and their clearing members. Taking this into account together with the current monopolistic situation in many countries, these guidelines need to be properly balanced so that the administrative burden and the costs do not become glaringly obvious excuses to preserve national monopolies.

FEDERATION OF FINNISH FINANCIAL SERVICES

Lea Mäntyniemi



ANNEX 1: SCENARIOS THAT MAY BE CONSIDERED TOGETHER WITH THE MARKETPLACES WHEN ENTERING INTO INTEROPERABILITY ARRANGEMENTS

This annex is part of the Federation of Finnish Financial Services' response to the ESMA consultation on "GUIDELINES FOR ESTABLISHING CONSISTENT, EFFICIENT AND EFFECTIVE ASSESSMENTS OF INTEROPERABILITY ARRANGEMENTS."

With reference to the following chapter on our response, we provide ESMA with a list of scenarios that were considered together with the participants to the CCPs, the marketplace and the interoperable CCPs to be when Nasdaq OMX Nordic was aiming for interoperability in spring 2012 (a process that was later frozen by Nasdaq OMX Nordics own, regrettable decision.

These guidelines focus on the arrangement between the CCPs only. However, the role of the marketplaces should also be incorporated into these guidelines. As stated above, they will be of key importance in determining whether principles of open access and competition are put into practice or not. One example of a guideline that should be added is a guideline ensuring that the interoperable CCPs shall create and discuss in consultation with both the marketplace and clearing members a recovery/continuity plan. This will be used in the event that one CCP is in default or facing technical problems. These situations require actions not only from interoperable CCPs but also from the marketplace. Please see Annex 1 for an example on the scenarios that may be taken into account.

SCENARIOS CONSIDERED IN A COMPETITIVE CLEARING ENVIRONMENT

1. Any of the interoperable CCP is in default
2. General or Direct Clearing Member of any of the CCPs is in default
3. Non-Clearing Member is in default
4. Any of the interoperable CCPs has a system failure or other disruption event
5. Technical disturbances in the connection between any of the CCPs and the market place
6. Any of the interoperable CCPs rejects the trade for clearing

In these scenarios, it was considered when trading needs or may be suspended and when it can be maintained. Further, it was considered whether clearing should be done bilaterally or whether CCP clearing could be continued. In some of the scenarios, it was for example considered that a short period in bilateral clearing was unavoidable.

Further, in all of the scenarios, the required level of **readiness of the trading venue, the affected members and any other members, the CCPs and the GCMs and the CSDs** readiness were carefully considered and agreed on.

Finally, **the communication plan by the exchange for all six scenarios was included** in the plan, in order to ensure sharing of information and to maintain connectivity between participants.