



BANKING STAKEHOLDER GROUP

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CONSULTATION PAPER ON JOINT DRAFT REGULATORY TECHNICAL
STANDARDS ON THE CRITERIA FOR DETERMINING THE
CIRCUMSTANCES IN WHICH THE APPOINTMENT OF A CENTRAL
CONTACT POINT PURSUANT TO ARTICLE 45(9) OF DIRECTIVE (EU)
2015/849 IS APPROPRIATE AND THE FUNCTIONS OF THE CENTRAL
CONTACT POINT

RESPONSE BY THE EBA BANKING STAKEHOLDER GROUP

London, May 5th, 2017

Specific comments to the questions

Q1: Do you agree with the criteria for a requirement to appoint a Central Contact Point (CCP)? In particular,

- **Do you agree that it is proportionate to require the appointment of a CCP where**
 - **The number of establishments is equal to, or exceeds, ten; or**
 - **The amount of electronic money distributed and redeemed, or the value of the payment transactions executed by such establishments is expected to exceed EUR 3 million per financial year or has exceeded EUR 3 million in the previous financial year?**

1. Proportionality:

The cost of putting in place a CCP will necessarily need to be borne by the business that is being deployed in the host member state. A reasonable assessment of when a CCP is required may therefore also provide that the cost of operating a CCP can be borne by the business in the host member state, without creating an unreasonable barrier to entry for passporting services. In other words, the threshold that is set for requiring a CCP, must not be so low as to create a significant additional cost relative to the size of the business, that may render the business case for entering into a new member state market unfeasible.

2. Thresholds

- (i) The setting of a numerical value for the number of establishments is supported. It would be additionally helpful however to take account of the revenue or turnover generated by outlets falling within the threshold. A low turnover, as may be the case in the initial stages of a business may not support the need for a CCP, even if the number of establishments is higher than that contemplated by the threshold. We therefore suggest that the number of establishments be subject to an additional turnover or revenue test to provide a more nuanced outcome.
- (ii) The transaction threshold of EUR 3m appears on the low side, given that income generated from transactions will vary between 5% and 0.1%, and revenue for the business will therefore vary between EUR 150,000 and EUR 3,000 for different kinds of payment businesses. Neither revenue figure is capable of supporting a CCP, once other business costs are taken into consideration. We recommend a review

of the threshold to ensure that providers are able to continue to offer services in other member states under the right of establishment, without this leading to a failure of their business case, and withdrawal from the market. The likely outcome may be increased offering of services on a cross border basis, at the expense of establishment.

- **Do you agree that Member States should be able to**
 - **require all institutions, or certain categories of institutions, to appoint a CCP where this is commensurate with the ML/TF risk associated with the operation of these institutions' establishments on the Member State's territory; and**
 - **empower competent authorities to require an institution to appoint a CCP where they have reasonable grounds to believe that the establishments of that institution present a high money laundering and terrorist financing risk, even if the criteria in Article 3 (1) and (2) of these draft RTS are not met.**

If you do not agree, clearly set out your rationale and provide supporting evidence where available.

We believe that reasonable quantitative tests should be sufficient to enable member states to create a level playing field for established PSPs. Qualitative tests that are based on perceived or actual risk of money laundering or terrorist financing should be addressed by the firm in a manner that is best suited to the risk posed.

Before requiring the appointment of a CCP, it may be preferable to require the firm to address the specific risks, perhaps through the introduction of additional controls, restrictions on product functionality, or enhanced monitoring of transactions etc.

The CCP requirement should be subject to the quantitative test, and the risk of money laundering or terrorist financing should be addressed in the most appropriate manner, through the application of the risk based approach, directing resources to the most effective mitigating measures.

Q2: Do you agree that the functions a CCP must always have are necessary to ensure that:

- **The CCP can ensure, on the appointing institutions' behalf, establishments' compliance with the host Member State's AML/CFT requirements?**
- **Facilitate supervision by the host Member State's competent authorities?**

If you do not agree, please explain which functions you think the CCP should have, and why.

Ensuring compliance

We are in favour of firms deploying their resources in the most effective manner, and this may or may not involve an operational role for the CCP. A CCP may rely on systems that are centrally located to ensure compliance, or may wish to deploy local resources.

We suggest restricting the provisions of the RTS to these outcomes, without introducing specific operational functions that need to be delivered by a CCP specifically. Provisions of Article 4(b)-(f) requiring the CCP to oversee compliance, take corrective actions etc. restrict the manner by which a firm may wish to execute its compliance operations. We are in favour of an outcomes based model, where the CCP ensures compliance and communication with the host CA but without specifying the manner in which this is achieved. The RTS can elaborate such outcomes, and need not set out the manner of their delivery.

Article 5 suggests that the CCP becomes the main means of communication with the firm. It may be more helpful for the CCP to make introductions to relevant staff, follow up on queries etc., rather than become an additional layer in all communications. We suggest adding 'facilitating communication' rather than 'representing the institution in its communication' at 5(a), and similarly for paragraphs 5(b) and (c).

Q3: Do you agree that CCPs should be required to fulfil one or more of the additional functions in Article 6 of these draft RTS where this is commensurate to the ML/TF risk associated with the operation of establishments other than a branch on the host Member State's territory?

If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out whether you think that these additional functions should be core functions instead, and if so, why.

We continue to believe that a firm should be given the ability to deploy its tools and resources in the most effective manner, given its obligations to put in place a risk based approach to compliance. Specifying which part of the business is responsible for making suspicious transaction reports, monitoring etc. and for this to be a CCP runs counter to the objectives of the risk based approach. It may result in duplication of functions and less than efficient deployment of resources, particularly when extrapolated to multiple member states.

We suggest an outcomes based approach where the CCP ensures that such services are delivered, and is held to account if they are not.

Q4: What level of resource (financial and other) would be required to comply with these RTS? Please differentiate between one-off (set-up) costs and ongoing (running) costs. When providing your answer, please consider that the ESAs' mandate in Article 45(10) of Directive (EU) 2015/849 does not extend to determining the form a CCP should take.

We will not be responding to this question.