

**Mr Olivier Guersent
Director General
Financial Stability, Financial Services
and Capital Markets Union
European Commission
1049 Brussels
Belgium**

Ref: Exemption from financial obligations under Articles 41 and 42 of EMIR¹

Dear Mr Guersent,

During its March 2018 meeting, the ESMA Board of Supervisors discussed whether a CCP can exempt certain Clearing Members (typically public entities such as governmental entities, central banks and supranational entities) from the financial obligations under Articles 41 and 42 of EMIR, i.e. to provide the CCP with initial margins and default fund contributions.

ESMA has noted different practices across EU CCPs, and different interpretations across the relevant National Competent Authorities of “credit exposures” from Clearing Members which are public entities among the ones mentioned above. In particular, national competent authorities, believing that these public entities should be exempted under EMIR, have authorised their CCPs to consider the zero risk-weight envisaged under the Capital Requirement Regulation for such public entities to strike down their respective credit exposures. This implies that no initial margins and no default fund contributions are due from such clearing members. Other EU CCPs though apply no exemptions for this category of clearing members.

ESMA considers that this issue needs to be clarified in order to ensure supervisory convergence and an even level playing-field across CCPs in the EU. As this issue relates to the scope of EMIR, ESMA considers that the Commission is best placed to clarify whether CCPs could be allowed not to collect margins and default fund contributions from these public

¹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

entities and, if so, whether a specific amendment of EMIR in the context of the ongoing review process (either under the EMIR 2.1 - Refit or the EMIR 2.2 proposal) would be appropriate.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'S/M', is written over a light blue rectangular background.

Steven Maijor

cc: Roberto Gualtieri MEP, Chair of the Committee on Economic and Monetary Affairs,
European Parliament

Vladislav Goranov, President of the ECOFIN Council, Council of the European Union

Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union