



Press and Information

General Court of the European Union  
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Judgment in Case T-496/11  
United Kingdom v European Central Bank

## **The General Court annuls the Eurosystem Oversight Policy Framework published by the ECB, which requires central counterparties to be located in the Eurozone**

*The ECB does not have the competence necessary to impose such a requirement on central counterparties involved in the clearing of securities*

The Eurosystem comprises the European Central Bank (ECB) and the national central banks of the Member States that have adopted the euro as a common currency. On 5 July 2011, the ECB published on its website the Eurosystem Oversight Policy Framework, which describes the Eurosystem's role in the oversight of 'payment, clearing and settlement systems'. According to the ECB, the oversight of those systems and that infrastructure as a whole stems from the task assigned to it by the FEU Treaty of promoting the smooth operation of payment systems and from Article 22 of the Statute of the European System of Central Banks and of the ECB, which provides that 'the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries'.

In the Policy Framework, the ECB explained that securities settlement systems and central counterparty clearing houses (central counterparties; 'CCPs')<sup>1</sup> are key components of the financial system. A financial, legal or operational problem affecting them can be a source of systemic disturbance for the financial system. That is particularly true of CCPs in that they are a focal point for credit and liquidity risk. It was further stated in the Policy Framework that malfunctioning on the part of infrastructures located outside the euro area could have adverse effects on payment systems located in the euro area, whilst the Eurosystem has no direct influence on such infrastructures. The ECB drew the conclusion that infrastructures that settle euro-denominated transactions should be legally incorporated in the euro area with full managerial and operational control and responsibility, over all core functions, exercised from within that area.

The ECB stated that this location policy applies to CCPs which, on average, have a daily net credit exposure of more than €5 billion in one of the main euro-denominated product categories.

The United Kingdom brought an action before the General Court, contending, in particular, that the ECB lacks competence to impose a location requirement in respect of CCPs.

In its judgment delivered today, **the General Court annuls the European Oversight Policy Framework published by the ECB in so far as it sets a requirement for CCPs involved in the clearing of securities to be located within the Eurozone.**

Stating that creation of such a requirement goes beyond mere oversight by intervening in the regulation of their activity, the General Court holds that **the ECB lacks the competence necessary to regulate the activity of securities clearing systems as its competence is limited to payment systems alone by Article 127(2) of the FEU Treaty.** Accordingly, in the absence of an explicit reference to the clearing of securities in Article 22 of the Statute, the term 'clearing and payment system' must be interpreted as intended to make it clear that the ECB has competence to adopt regulations to ensure efficiency and safety of payment systems, including

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<sup>1</sup> CCPs ensure the clearing of certain over-the-counter derivative transactions by bearing and managing the credit risk of the parties to a transaction.

those with a clearing stage, rather than granting it an autonomous regulatory competence in respect of all clearing systems.

The General Court then rejects the ECB's line of argument to the effect that the task entrusted to it by the FEU Treaty of promoting the sound operation of payment systems means that it necessarily has the power to regulate the activity of securities clearing infrastructures. The General Court states that, if the ECB were to consider that that power is necessary for proper performance of the task referred to, it would be for the ECB, acting on the basis of Article 129(3) of the FEU Treaty, to request the EU legislature to amend Article 22 of the Statute, by the addition of an explicit reference to securities clearing systems.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106