
THIRD COUNTRY CCP SUPERVISION AS A CATALYST FOR CENTRALIZED EU CCP SUPERVISION?

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ABSTRACT

Central counterparties (CCPs) have rightfully been labeled the nuclear powerhouses of modern financial markets. As institutionalized risk managers and loss absorbers, CCPs provide a function that is critical for a wide variety of transactions in different segments of financial markets. Crucially, CCPs serve as risk mutualization mechanisms, which may in times of crisis result in loss redistribution. Viewed from this perspective, crisis management decisions from CCP supervisors may heavily affect the interests of stakeholders in various jurisdictions (e.g. CCPs, clearing members, clients, central banks, and taxpayers). In absence of jurisdiction-independent CCP supervisors, there is scope for value redistribution and it cannot be assumed that CCP supervisors will pursue a balance of stakeholder interests that is optimal to financial stability or society. Against this backdrop and because the legislative framework for EU CCPs has been harmonized at the EU-level, there appears to exist a strong case for centralized supervision over EU CCPs. Nevertheless, despite multiple attempts to centralize supervision of EU CCPs at the EU-level, EU CCP supervision has remained largely a competence of the national supervisors in the member states, mainly to keep supervisory powers aligned with fiscal responsibilities in case of CCP failure. This paper reexamines the present EU policy of decentralized EU CCP supervision in light of the post-Brexit centralized EU supervisory regime for systemically important third country CCPs, which is now reaching cruising speed. The paper develops three arguments. First, it submits that a decentralized supervisory regime for EU CCPs is difficult to logically square with the policy arguments underpinning the post-Brexit EU supervisory system for systemically important third country CCPs. Secondly, it argues that the controversial location policy for ‘too systemically important’ third country CCPs—which runs contrary to the direction of travel in the US and has been perceived by some as counterproductive for EU financial stability—could be more justifiable if a centralized system of EU CCP supervision were to be adopted. Thirdly, building upon the first two arguments, the paper hypothesizes that the post-Brexit system of third country CCP supervision may serve as a catalyst for centralized EU CCP supervision and submits that existing regimes of centralized supervision in other sectors of EU financial markets could be used as a template to design centralized supervision for EU CCPs.

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