

Eesti Pank



FINANTSINSPEKTSIOON

MEMORANDUM OF UNDERSTANDING on oversight and supervision of securities settlements

Due to the need to specify precisely the details of the working cooperation between Eesti Pank's oversight of securities settlements and the Financial Supervision Authority's supervision of securities settlement systems and operators thereof, for the purpose of ensuring financial stability;

In accordance with subsection 2 (1) and § 3 of the Financial Supervision Authority Act regarding the Financial Supervision Authority and clause 2 (2) 3) and 4) of the Eesti Pank Act regarding Eesti Pank;

In accordance with §§ 48 and 50, subsection 54 (2) and clause 54 (4) 3) of the Financial Supervision Authority Act and §§ 21 and 35 of the Eesti Pank Act;

In line with the following international standards of supervision and oversight:

- (i) Recommendations of the European System of Central Banks and the European Securities Market Authority for securities settlement systems;
- (ii) Consultative principles of the Bank for International Settlements and the International Organisation of Securities Commissions regarding financial market infrastructures;
- (iii) Principles of the Bank for International Settlements regarding oversight of payment and settlement systems by central banks; and
- (iv) Standards of the European System of Central Banks on securities transaction settlement systems used for performing the collateral transactions of the Eurosystem;

Herewith Eesti Pank, represented by Deputy Governor Madis Müller, as one Party, and the Financial Supervision Authority, represented by Board Member Kilvar Kessler, as the other Party (hereafter separately Party and together Parties), enter into this memorandum of understanding (MoU), agreeing to the following:

1. General clauses

This MoU shall specify how the Parties shall coordinate to carry out the following tasks:

- 1.1. Making of decisions affecting securities settlements;
- 1.2. Supervision by the Financial Supervision Authority over securities settlement systems and the operators of these systems, which consists of inspecting the activities of securities settlement systems and their operators, granting approvals, and requesting that violations be corrected, for the purpose of ensuring the lawfulness of securities settlements;
- 1.3. Oversight by Eesti Pank of securities settlements, which consists of assessing securities settlement systems and facilitating their development, for the purpose of ensuring the optimum functioning of securities settlement systems and the stability of the financial system;
- 1.4. Information exchange about the state and risks of securities settlement systems.

2. Making decisions affecting securities settlements

- 2.1. Both Parties shall inform each other about any of their decisions and actions that may significantly affect securities settlements, unless this is prohibited by law. If possible, the Parties shall consult together before taking such decisions or performing such actions, in order to determine the reasons for and possible consequences of the decisions or actions. The results of such consultations shall be recommendatory.
- 2.2. Drafts of regulations and guidelines prepared by one Party shall be presented to the other Party for an opinion if the Party preparing the draft considers that the draft relates to the other Party's competence in supervision or oversight of securities settlements or if the Parties have signed any such agreement.
- 2.3. If there are any changes in the services offered or the business models used in the securities settlement systems, the Parties shall work together to approve the changes and to present suggestions to the parties of the securities settlements, unless this would restrict a right of decision-making that has been assigned to the sole competence of one Party by law.
- 2.4. Either Party shall forward to the other Party all significant information that it may discover about draft laws in preparation that would affect securities settlements.
- 2.5. The Parties may present to each other suggestions for implementing suitable measures for performing the tasks listed in clause 1 of this MoU, and may present to each other assessments of the suitability and effects of the measures planned or implemented by the other Party.

3. Cooperation in supervision and oversight of securities settlement systems

- 3.1. When performing supervision over securities settlement systems and their operators, the Financial Supervision Authority shall:
 - 3.1.1. Inform Eesti Pank about its intention to conduct an on-site inspection before starting that on-site inspection, and follow suggestions from Eesti Pank about the on-site inspection if possible;
 - 3.1.2. Inform Eesti Pank about the results of the on-site inspection and the end of the on-site inspection;

- 3.1.3. Inform Eesti Pank about any circumstances discovered in the course of the supervision proceedings and about any results of the proceedings which are needed for Eesti Pank to conduct its oversight.
 - 3.2. When conducting oversight of securities settlement systems, Eesti Pank shall:
 - 3.2.1. Inform the Financial Supervision Authority beforehand about the establishment of new payment systems in the area of governance of Eesti Pank or with the consent of Eesti Pank and about changes in payment systems governed by Eesti Pank, if such changes affect the activities of the securities settlement systems;
 - 3.2.2. Inform the Financial Supervision Authority about the results of its work to ensure continuous operation as set out in the Emergency Act, and provide an overview of the status of continuous operation to be presented to the Ministry of Internal Affairs;
 - 3.2.3. Inform the Financial Supervision Authority of its intent to conduct any assessment of the securities settlement systems before conducting the assessment, and follow the suggestions of the Financial Supervision Authority about the areas of governance of the Financial Supervision Authority if possible;
 - 3.2.4. Share the results of its oversight of the securities settlement systems with the Financial Supervision Authority.

4. Information exchange

- 4.1. Using the information gathered from their own areas of governance, the Parties shall share with each other information about the activities and risks of securities settlement systems as far as is allowed by law, if this information is necessary for the successful supervision and organisation of continuous operation of those systems. The information shall be forwarded in accordance with clause 54 (4) 3) of the Financial Supervision Authority Act, at the initiative of the Party that has the information or upon the request of the other Party.
- 4.2. The Parties shall inform each other about significant failures (incidents) that occur in the securities settlement systems and that endanger the stability of securities settlements or the financial sector.
- 4.3. Eesti Pank shall inform the Financial Supervision Authority of any technical changes in payment systems that will affect or may affect the continuous operation of the securities settlement systems.
- 4.4. The Parties shall assign contact persons for the exchange of information described in this MoU, and shall inform each other of the names and contact data of those contact persons. The Parties shall inform each other immediately of any changes in the data of the contact persons.
- 4.5. Notices related to the performance of this MoU shall be considered delivered if the contact person of the other Party has been made aware of them in writing or in a form allowing for reproduction in writing.

5. Confidentiality

- 5.1. The information exchanged between the Parties within the framework of this MoU shall be deemed confidential unless the Parties have agreed otherwise. The Parties shall not have the right to disclose the information received under this MoU to any third parties, unless prescribed otherwise in law.
- 5.2. The Parties shall ensure that all persons who have access to supervision-related information within the framework of this MoU are informed about the confidentiality of the supervision-related information made available to them and that they are obliged to respect the confidentiality requirements as prescribed by law.
- 5.3. Any information exchanged within the framework of this MoU may be used only in accordance with the purposes of this MoU. It shall hereby be deemed that each Party receiving information has declared to the other Party immediately prior to receiving the information that the Party receiving the information is entitled to receive the information and conforms to the prerequisites for receiving the information and that the forwarding of the information allows the Party receiving the information reasonably to fulfil its legal objectives.

6. Validity, amendments and supplements to the MoU

- 6.1. This MoU has been signed for an indefinite period and shall enter into force at the moment of being signed by both Parties.
- 6.2. The Parties shall assess the relevance of this MoU at least once in every three years and shall make any necessary amendments to the MoU. When the MoU is amended, the amendments shall be formalised as written agreements between the Parties and shall be enclosed with this MoU as separate signed documents.
- 6.3. The lists of contact persons shall be reviewed at least once a year and shall be updated as necessary.

Eesti Pank

Financial Supervision Authority

Madis Müller
Deputy Governor

Kilvar Kessler
Board Member

2 November 2011

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