



## **Comments on IOSCO's Consultation report on cross-border regulation (CR09/2014)**

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*ANSA (Association Nationale des Sociétés par Actions) is a not for profit membership association, which represents the interests of French quoted and non-quoted joint-stock companies. Its aims are two-fold: to deliver high quality and authoritative advice to members on issues of company, financial and securities law, as well as tax law concerning shareholders, uniquely positioning the association at the junction between issuers and law practitioners and academics; to promote the interests of its member companies by lobbying and interacting with national and EU authorities on these matters.*

*Membership consists of 230 quoted and non-quoted French joint-stock companies from different sectors, and 185 associate members mainly from law and audit firms.*

*ANSA is a founding member of Europeanissuers, which represents the interests of quoted companies across the European Union.*

We welcome IOSCO's report on Cross Border Regulation, which we find extremely timely. The report summarises the responses received to an earlier survey, and looks in detail at how the cross-border regulatory tools currently being used in different jurisdictions might be used as basis for a coordinated Toolkit.

To help promote international cooperation, some surveyed regulators and industry participants recommend that IOSCO enhance international dialogue between policy makers and regulators in different jurisdictions, develop guidelines for assessing different regulatory regimes, and increase the granularity of IOSCO's own standards and principles, among other measures.

We support IOSCO's approach of advocating the use of mutual recognition mechanisms under which a state recognizes the adequacy of another state's regulation or supervision of an activity as a substitute of its own. As a result, an operator who complies with the applicable home state rules may access the host state without being subjected to part or all of the host state's rules.

While the EU combines the factors highlighted in the report that favour a strong mutual recognition regime, there is however room for improvement and need for coordination between the EU rules and those adopted by other major jurisdictions.

Not only do the conditions in the EU differ from those in third countries but the requirements vary from one EU piece of legislation to another. The following examples show a number of different ways in which the EU applies the mutual recognition principle.

Under the European Market Infrastructure Regulation (EMIR), the third country issue may be addressed in two different ways. First, the OTC derivatives contracts subject to the clearing obligation and the MiFiR trading obligation may be cleared through third country CCPs or traded via third

country trading venues. Second, the clearing obligation and the MiFiR trading obligation may apply to transactions or persons outside the EU.

Regarding the recognition of third country CCPs and trading venues, EMIR provides that third country CCPs must comply “with legally binding requirements which are equivalent to the requirements set out under the Regulation”. In addition, the third country regime must provide for an “effective equivalent system for the recognition of CCPs authorized” under other legal regimes, such as the EU’s.

As for the recognition of third country trading venues, MiFiR provides that the third country must develop “an equivalent reciprocal recognition of trading venues authorised” under the Regulation.

In relation to persons or transactions outside the EU, EMIR applies the clearing obligation to transactions between entities established in third countries that would be subject to the clearing obligation if established within the EU, “provided that the contract has a direct, substantial and foreseeable effect within the Union and where such an obligation is necessary to prevent the evasion of any provisions of the Regulation”.

There is not yet clarity as to how these rules will apply and it is therefore critical that the EU engages with third countries to develop a mutual recognition framework.

We believe that IOSCO, given its position as both the primary standard setter and global forum for securities regulators, should play a leading role in promoting mutual recognition among securities market regulators and act as a catalyst with a view to helping shape a common understanding of such a mutual recognition framework.