

Regulatory technical standards specifying the operational conditions, the representativeness obligation and the reporting requirements related to the active account requirement

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The Council adjusted its position in negotiations with the European Parliament on a draft regulation aimed at increasing transparency and reducing risk in the over-the-counter (OTC) derivatives market (i.e. a derivative not traded on an exchange but instead privately negotiated between two counterparties). This is designed to facilitate rapid agreement with the Parliament, so as to enable the regulation to be adopted at first reading.

The main change to a general approach agreed by the Council in October relates to the procedure for authorising central counterparties (CCPs), in particular to the powers of the CCP's "home" member state, i.e. the Member State of establishment, versus those of the college of supervisors and the [European Securities and Markets Authority \(ESMA\)](#).

A general approach agreed in October specified that a CCP authorisation by a Member State's competent authority could only be blocked by a negative opinion of the college supported by a "unanimity minus one" vote (i.e. all the members of the college, excluding the authorities of the "home" member state). However, in order to facilitate agreement with the Parliament, which is pushing for a stronger role for the college and for ESMA, the Council today approved a proposal by the presidency which would introduce **two additional safeguards**, whereby :

- following a negative opinion of the college, with "unanimity minus one", the "home" member state can refer the matter to ESMA for binding mediation.
- when a "sufficient" majority in the college opposes authorisation of a CCP, this "sufficient majority" may then decide to put the issue to ESMA for binding mediation. The Council's position defines a "sufficient" majority as two-thirds of college members, with votes in the college limited to two per member state for colleges of up to and including 12 members and three for colleges above that size.

Negotiations also produced compromises on the **following two issues**:

- **pension schemes** would be exempt from a clearing obligation for a period of three years, extendable by another two years plus one year, subject to reports justifying the deferrals.
- **CCPs from third countries** would only be recognised in the EU if the legal regime of the respective third country provides for an effective equivalent system for the recognition of CCPs authorised under foreign legal regimes. However, this approach would not constitute a precedent for other legislation on the supervision and oversight of financial market infrastructures.