EMIR and ESMA Regulations: procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs

2017/0136(COD) - 18/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 435 votes to 57, with 51 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.

As a reminder, the proposal aims to introduce specific amendments to the European Market Infrastructure Regulation (EMIR) and the ESMA Regulation with a view to establishing a clear and consistent supervisory framework for EU and third country CCPs.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Central Counterparty Supervisory Committee

The Committee shall comprise the chairperson, independent members and competent authorities of Member States with an authorised CCP:

- where it convenes in relation to authorised CCPs, central banks of issue of Union currencies of the financial instruments cleared by authorised CCPs might, on a voluntary basis, participate in the CCP Supervisory Committee in relation to the areas of Union-wide assessments of the resilience of CCPs to adverse market developments and relevant market developments, to facilitate access to information that could be relevant for carrying out their tasks;

- where it convenes in relation to third-country CCPs, central banks of issue of all Union currencies of the financial instruments cleared or to be cleared by the respective third country CCP might, on a voluntary basis, participate in the CCP Supervisory Committee for preparation of decisions in relation to Tier 2 CCPs.

Where the Chair or any of the independent members no longer fulfils the conditions required for the performance of his or her duties or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt an implementing decision to remove him or her from office. The Council shall act by qualified majority. They shall act independently and objectively in the sole interest of the Union as a whole.

Tasks of the Supervisory Committee

In relation to CCPs authorised or applying for authorisation, the CCP Supervisory Committee shall prepare decisions and carry out the tasks entrusted to ESMA and in the following points: (i) at least annually, conduct a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of CCPs ; (ii) at least annually, initiate and coordinate

Union-wide assessments of the resilience of CCPs to adverse market developments; (iii) promote the regular exchange and discussion among competent authorities; (iv) be informed of and discuss all opinions and recommendations adopted by colleges, in order to contribute to the consistent and coherent functioning of the colleges and foster the coherence of the application of this Regulation among them.

In order to ensure the effective performance of its tasks, the CCP Supervisory Committee should be supported by dedicated staff from ESMA to prepare its meetings, prepare the analyses necessary to carry out its tasks and support it in its international cooperation.

The CCP Supervisory Committee shall take its decisions by a simple majority of its members.

Other amendments aim to:

- strengthen the role of colleges, they should be able to provide opinions on additional supervisory areas of fundamental impact on a CCP's business operations, including on the assessment of shareholders and members with qualifying holdings of CCPs and outsourcing of operational functions, services or activities;

- provide ESMA with new mandates to (i) develop draft regulatory technical standards on the extension of activities and services and in order to specify the conditions concerning the review of models, stress testing and back testing; (ii) issue necessary guidelines to further specify the common procedures for the supervisory review and evaluation process in relation to CCPs;

- provide that with regard to decisions to be taken in relation to Tier 2 CCPs, the CCP Supervisory Committee shall consult the central banks of issue. Upon conclusion of the period for consultation, the CCP Supervisory Committee shall duly consider the amendments proposed by the central banks of issue;

- clarify accountability: the European Parliament or the Council may invite the Chair and the independent members of the CCP Supervisory Committee to make a statement while fully respecting their independence. They shall make a statement before the European Parliament and answer any questions put by its Members whenever so requested.