

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) - 12/12/2019 - Final act

PURPOSE: to strengthen the supervision of CCPs in the EU and third countries with a view to consolidating the financial stability of the European Union (EU).

LEGISLATIVE ACT: Regulation (EU) 2019/2099 of the European Parliament and of the Council 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.

CONTENT: the Regulation introduces specific amendments to [Regulation \(EU\) No 648/2012](#) on European Market Infrastructures ("EMIR" Regulation) with a view to establishing a clear and consistent oversight arrangement for EU and third country CCPs. Central counterparty clearing houses (CCPs) are entities that help facilitate trading in various European derivatives and equities markets. Since the adoption of the EMIR Regulation, the scale and scope of CCP activity in the EU and globally has grown rapidly. As of August 2019 there were 16 CCPs established and authorised in the EU. In addition, 33 CCPs from third countries have been recognised under the EMIR Regulation under its equivalence provisions, enabling them to offer their services in the EU. The expansion of CCP activity is expected to continue in the coming years.

This Regulation aims to strengthen the supervision of CCPs in order to take account of the increasing size, complexity and cross-border dimension of clearing in Europe by introducing a single mechanism within the European Securities and Markets Authority.

The main elements of the proposal are as follows:

Creation of a CCP Supervisory Committee

The European Securities and Markets Authority (ESMA) shall set up a permanent internal committee for CCPs, responsible for tasks relating to CCPs authorised in the EU and CCPs from third countries.

The Committee shall be composed of the Chair, two independent members and the competent authorities of the Member States with an authorised CCP. The central banks of the countries whose currency is used for a given transaction will be able to participate in the Committee on specific issues, but will not have voting rights.

The chairperson and independent members of the CCP Supervisory Committee shall act independently and objectively in the Union interest and shall be accountable to the European Parliament and the Council for any decisions taken on the basis of the EMIR Regulation.

Third country central counterparties

The Regulation aims to tighten the recognition and supervision of third country CCPs for those CCPs that are systemically important to the EU. To this end, it distinguishes between lower-risk CCPs (known as

Tier 1 CCPs) and those that are systemically important for the EU or one or more of its Member States (Tier 2 CCPs).

The Regulation imposes stricter requirements on Tier 2 CCPs to be recognised and authorised to operate in the EU. In particular, it requires :

- that the prudential requirements for CCPs in the EU are met, taking into account the regulations of third countries;
- that the CCP agrees to provide all relevant information to ESMA and to accept on-site inspections, and that the necessary assurances are given that such arrangements are valid in the third country.

ESMA shall be in a position, given the scale of systemic importance of a CCP or some of its clearing services, to recommend to the Commission that a CCP should not be recognised. The Commission may ultimately decide that the CCP should be established in the EU. The third country CCP shall establish itself in the EU in order to be able to operate.

ESMA shall, inter alia, need to consider changes in the nature, size and complexity of the activities of the third country CCP. These reviews shall take place at least every five years.

ESMA may impose fines on both Tier 1 and Tier 2 CCPs if it finds that they have intentionally or negligently infringed the EMIR Regulation by providing it with false or misleading information.

ENTRY INTO FORCE: 1.1.2020.