Basic information

2017/0136(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
EMIR and ESMA Regulations: procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs Amending Regulation (EU) No 1095/2010 2009/0144(COD) Amending Regulation (EU) No 648/2012 2010/0250(COD) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision 8.40.08 Agencies and bodies of the EU	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	HÜBNER Danuta Maria (PPE)	06/07/2017
	Shadow rapporteur GUALTIERI Roberto (S&D) SWINBURNE Kay (ECR) JEŽEK Petr (ALDE) CARTHY Matt (GUE/NGL) LAMBERTS Philippe (Verts/ALE) MEUTHEN Jörg (EFDD)	

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	The committee decided not to give an opinion.	
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

	AFCO Constitutional Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3722	2019-10-15

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
13/06/2017	Legislative proposal published	COM(2017)0331	Summary
11/09/2017	Committee referral announced in Parliament, 1st reading		
16/05/2018	Vote in committee, 1st reading		
16/05/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
25/05/2018	Committee report tabled for plenary, 1st reading	A8-0190/2018	Summary
28/05/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
30/05/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
01/04/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE637.301 GEDA/A/(2019)002707	
18/04/2019	Decision by Parliament, 1st reading	T8-0438/2019	Summary
18/04/2019	Results of vote in Parliament		
15/10/2019	Act adopted by Council after Parliament's 1st reading		
23/10/2019	Final act signed		
23/10/2019	End of procedure in Parliament		
12/12/2019	Final act published in Official Journal		

Technical information

Procedure reference	2017/0136(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation

Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EU) No 1095/2010 2009/0144(COD) Amending Regulation (EU) No 648/2012 2010/0250(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/10239

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE616.847	31/01/2018	
Amendments tabled in committee		PE619.413	13/04/2018	
Amendments tabled in committee		PE620.778	13/04/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0190/2018	25/05/2018	Summary
Text agreed during interinstitutional negotiations		PE637.301	20/03/2019	
Text adopted by Parliament, 1st reading/single reading		T8-0438/2019	18/04/2019	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2019)002707	20/03/2019	
Draft final act	00088/2019/LEX	23/10/2019	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2017)0331	13/06/2017	Summary
Document attached to the procedure	SWD(2017)0246	14/06/2017	
Document attached to the procedure	SWD(2017)0247	14/06/2017	
Supplementary legislative basic document	COM(2017)0539	20/09/2017	Summary
Commission response to text adopted in plenary	SP(2019)440	08/08/2019	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary

Contribution	DE_BUNDESRAT	COM(2017)0331	26/09/2017	
Contribution	ES_PARLIAMENT	COM(2017)0331	09/10/2017	
Reasoned opinion	SE_PARLIAMENT	PE612.182	18/10/2017	
Contribution	FR_SENATE	COM(2017)0331	08/02/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES2566/2017	20/09/2017	
ECB	European Central Bank: opinion, guideline, report	CON/2017/0039 OJ C 385 15.11.2017, p. 0003	04/10/2017	Summary

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act

Regulation 2019/2099
OJ L 322 12.12.2019, p. 0001 Summary

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.

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) - 20/09/2017 - Supplementary legislative basic document

PURPOSE: to present a proposal for an **amendment of a pending proposal** for a Regulation 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 (EMIR II Commission's proposal).

CONTENT: the abovementioned proposal seeks to equip the Capital Markets Union with a more effective and consistent supervisory system for central counterparties (CCPs). It intends to ensure closer cooperation between national competent authorities for the supervision of CCPs and central banks responsible for Union currencies.

A **new body** is proposed to be established within the European Securities and Markets Authority (ESMA) (**CCP Executive Session**) which will be responsible for handling tasks related to CCPs in general and supervising Union and third-country CCPs in particular.

The CCP Executive Session is to be composed of permanent and CCP-specific members.

That proposal also **enhances ESMA's role in colleges**, by providing that the permanent members of the CCP Executive Session shall participate in college meetings for CCPs under Regulation (EU) No 648/2012, with the Head of the CCP Executive Session chairing and managing those meetings.

The present document is put forward to **supplement the EMIR II Commission's proposal**. It forms part of a package of measures with the purpose of enhancing the supervision of EU financial markets by improving the operation of the system of European Supervisory Authorities (ESAs).

This document specifically envisages **allocating an additional task to the CCP Executive Session**. That addition is considered necessary in view of the effective setting up of the CCPs Executive Session prior to the upcoming ESAs reform.

The additional task shall be to take decisions and actions on CCP matters with respect to specific articles of this Regulation.

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.

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) - 25/05/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Danuta Maria HÜBNER (EPP, PL) 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 committee recommended that European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows:

ESMA CCP Supervisory Committee: ESMA shall establish a **specific ESMA internal committee** for the purposes of preparing decisions and carrying out the tasks relating to the supervision of CCPs, of handling tasks related to CCPs in general, and of supervising Union and third-country CCPs in particular. The CCP Supervisory Committee shall be composed of authorities experienced in the supervision of CCPs. It shall be composed of a **permanent members** (a chair, a vice-chair, four directors, one representative of the ECB, and one non-voting representative of the Commission) and specific non-permanent members for the different CCPs. It would take its decisions by a simple majority of its members.

The chair, the vice-chair and the directors of the CCP Supervisory Committee shall act **independently and objectively** in the interest of the Union as a whole.

The European Parliament or the Council may invite the chair, the vice-chair or any of the Directors of the CCP Supervisory Committee to make a statement while fully respecting their independence. The chair shall report in writing on the main activities of the CCP Supervisory Committee to the European Parliament where requested.

During any investigations by the European Parliament, the CCP Supervisory Committee shall cooperate with the European Parliament.

National competent authorities: under the amending Regulation, national competent authorities shall continue to exercise their current supervisory responsibilities under Regulation (EU) No 648/2012.

However, in order to promote consistency in the supervision of CCPs throughout the Union, a division of competences depending on the decisions concerned shall be established. Three categories of decisions shall be distinguished: those for which competent authorities should obtain prior consent of ESMA, those for which competent authorities should consult ESMA and those for which competent authorities should remain solely responsible.

Where a competent authority disagrees with the proposed amendment or the objection of ESMA, it shall have the right to submit a reasoned request to the Board of Supervisors asking it to assess that objection or amendment. The Board of Supervisors may either endorse or reject ESMA's objections or amendments.

Recognition of a third-country CCP: when considering the application of a third-country CCP for recognition, **ESMA shall assess the degree of systemic risk** that the CCP presents to the financial stability of the Union or of one or more of its Member States on the basis of the objective and transparent criteria provided for in the Regulation. A Commission delegated act should further specify those criteria.

Where a central bank of issue decides to impose an additional requirement on a systemically important third country CCP, it shall strive to make its decision as transparent as possible, while adequately respecting the need to protect confidential or sensitive information.

Central banks of issue shall assess the resilience of recognised third country CCPs to adverse market developments having regard to the risk they pose to the stability of the currency of the central bank of issue, the transmission of monetary policy and the smooth functioning of payment systems. In such cases, **cooperation and information sharing between central banks** of issue and ESMA should be ensured to prevent duplication.

The ESMA shall put in place cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation that shall cover all elements necessary to ensure, among others, the smooth exchange information, the coordination of supervisory activities, the effective monitoring of regulatory and supervisory developments in the third country and effective cooperation in emergency situations.
In order to facilitate the exchange of information on third country CCPs, **colleges for third country CCPs** should be established.

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) - 13/06/2017 - Legislative proposal

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).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: following the financial crisis, and in line with the commitment made at the 2009 G20 in Pittsburgh, the EU adopted Regulation (EU) No 648/2012 of the European Parliament and of the Council on European market infrastructures (EMIR) to reduce systemic risk associated with the significant use of derivatives in order to preserve financial stability.

The EMIR contains several measures to ensure that standardised over-the-counter (OTC) derivatives contracts are cleared through a Central Counterparty (CCP). It introduces strict prudential, organisational and business conduct requirements for CCPs and established arrangements for their prudential supervision to minimise any risk to users of a CCP and underpin systemic stability.

There are currently **17 central counterparties established in the EU**, all of which are approved under EMIR to offer their services within the Union, although not all of them are authorised to clear all asset classes (e.g. only 2 CCPs clear credit derivatives, only 2 CCPs clear inflation derivatives). An additional **28 third-country CCPs** have been recognised under EMIR's equivalence provisions, allowing them to offer their services in the EU.

Under EMIR, EU CCPs are supervised by colleges of national supervisors, the **European Securities and Markets Authority** (ESMA), relevant members of the European System of Central Banks (ESCB), and other relevant authorities.

Since the adoption of EMIR, **the volume of CCP activity** – in the EU and globally - **has grown rapidly** both in scale and in scope. As of end of June 2016, around 62% of the global value of all OTC derivatives contracts and asset classes (interest rates, credit default, foreign exchange, etc.) were centrally cleared by CCPs, which is equivalent to $337 trillion.

The **growing importance of CCPs** in the financial system and the associated concentration of credit risk in these infrastructures have drawn the attention of governments, regulators, supervisors, central banks and market participants.

The Commission therefore considers that **further reforms to harmonise and strengthen the monitoring of EU and third country CCPs** are now necessary.

The proposal is in line with the Commission proposal for a Regulation on CCP Recovery and Resolution in November 2016. It complements the Commission's proposal for targeted amendments to EMIR which seeks to simplify certain EMIR requirements and make them more proportionate in order to reduce excessive costs for market participants, without compromising financial stability. This proposal should therefore provide further incentives for market participants to use central clearing – again reinforcing the importance of CCPs within the financial system.

It also takes into account feedback received following the publication of the Commission's Communication on responding to challenges for critical financial market infrastructures.

The objective of the proposal is to ensure that authorities are appropriately prepared to address a failing CCP, safeguarding financial stability and limiting taxpayer costs. The CCP Recovery and Resolution proposal refocused attention on the supervisory arrangements for EU and third country CCPs included in EMIR and the extent to which these arrangements can be made more effective five years after adoption of EMIR. This proposal is currently under negotiations in the European Parliament and the Council. That ongoing work-stream needs to be coordinated and consistent with the current proposal.

IMPACT ASSESSMENT: the preferred options in the impact assessment relate to targeted amendments of the of the supervisory arrangements of EMIR applying both to CCPs established in the EU and to third-country CCPs with a view to:

- **enhancing the supervision of CCPs established in the EU**: the current supervisory arrangements should be streamlined and further centralised through the establishment of a European supervisory mechanism, ensuring the proper involvement of national authorities, central banks of issue and ESMA within the scope of their responsibilities;
- **enhancing supervisory arrangements within the EU designed to mitigate the risks related to third-country CCPs**: these CCPs could be subject to a ‘sliding scale’ of additional supervisory requirements by ESMA and relevant CBIs based on objective criteria or thresholds.

CONTENT: this proposal aims to introduce specific amendments to the EMIR and ESMA regulations with a view to **establishing a clear and coherent supervisory arrangements for CCPs** established in the EU and in third countries.

The objective is to ensure that the EU authorities and national authorities are able to cope with a failing CCP, maintain financial stability and avoid that costs associated with the restructuring and the resolution of failing CCPs fall on taxpayers.

The main elements of the proposal are:

Creation of a new supervisory mechanism: the proposal also ensures closer cooperation between supervisory authorities and central banks responsible for EU currencies. To achieve this, a **newly-created supervisory mechanism will be established within European Securities and Markets Authority** (ESMA) ('CCP Executive Session') which will be responsible for ensuring a more coherent and consistent supervision of EU CCPs as well more robust supervision of CCPs in non-EU countries, or 'third countries'.

The proposed amendments focus on (i) the accountability and independence of the members of the CCP Executive Session; (ii) the interactions between the CCP Executive Session and the tasks of the Executive Director of ESMA; (iii) strengthening ESMA's information-gathering capacity; and (iv) the conditions and procedures for the authorisation and the supervision of the CCPs established in the Union.

Third country central counterparties: the proposal aims to make the process of recognition and supervision of third country CCPs stricter for those countries which are of systemic importance to the EU.

The proposal introduces a new "two tier" system for classifying third-country CCPs. Non-systemically important CCPs (Tier 1) will continue to be able to operate under the existing EMIR equivalence framework.

However, **systemically important CCPs** (so-called Tier 2 CCPs) **will be subject to stricter requirements**. These requirements include:

- compliance with the necessary prudential requirements for EU-CCPs while taking into account third-country rules;
- confirmation from the relevant EU central banks that the CCP complies with any additional requirements set by those central banks (e.g. the availability or type of collateral held in a CCP, segregation requirements, liquidity arrangements, etc.);
- the agreement of a CCP to provide ESMA with all relevant information and to enable on-site inspections, as well as the necessary safeguards confirming that such arrangements are valid in the third country.

In the event that certain CCPs may be of particular systemic importance for the EU financial system, the Commission could, at the request of ESMA and in agreement with the relevant central bank, decide that a CCP will only be able to provide services in the Union if it establishes itself in the EU.

BUDGETARY IMPLICATION: the impact of the legislative proposal on expenditure is as follows: (i) the hiring of 47 new temporary staff at ESMA (from August 2018); (ii) the cost of these new temporary agents will be fully financed by the fees raised from industry (no impact on the EU budget).

As ESMA would however incur costs under the Regulation from the entry into force of the Regulation, there is a need to obtain additional budget from the EU in 2018 and 2019 in order to cover for at least the 12 first months of operations following the entry into force of the Regulation.

The estimated impact on expenditure is estimated at **EUR 4 310 555 in 2018 and EUR 7 788 789 in 2019**.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.

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) - 04/10/2017 - European Central Bank: opinion, guideline, report

OPINION OF THE EUROPEAN CENTRAL BANK

The ECB has received requests for consultation from the Council of the European Union and the European Parliament on a 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 central counterparties (CCPs) and requirements for the recognition of third-country CCPs.

The ECB supports the initiative set out in the Commission’s proposal to enhance the role of the relevant members of the ESCB, as central banks of issue of the currencies of financial instruments cleared by CCPs, in the process for the supervision of Union CCPs and the recognition of third-country CCPs.

It supports the proposal that the Eurosystem, as the central bank of issue of the euro, should play a more meaningful role with respect to Union and third-country CCPs.

The ECB stresses that significant developments, both globally and in Europe, should increase the risks presented by CCPs to the smooth operation of payment systems and the implementation of the single monetary policy.

First, central clearing has become increasingly cross-border in nature and systemically important.

Second, the withdrawal of the United Kingdom (UK) from the Union will have a major impact on the Eurosystem’s ability to carry out its tasks as central bank of issue for the euro. At present, certain CCPs established in the UK clear significant volumes of euro-denominated transactions.

The Eurosystem’s ability to monitor and manage the risks posed by UK CCPs will be adversely affected if UK CCPs are no longer subject to the regulatory and supervisory framework for Union CCPs under Regulation (EU) No 648/2012 of the European Parliament and of the Council.

The proposed regulation envisages an enhanced role for the Eurosystem as central bank of issue for the euro in the framework under Regulation (EU) No 648/2012. In order to ensure that the Eurosystem can carry out this role, it suggested that the **ECB be granted regulatory competence over clearing systems for financial instruments**, in particular CCPs, by means of an amendment to Article 22 of the Statute of the ESCB.

The ECB makes the following specific observations:

The requirement to obtain the consent of the central bank of issue regarding certain draft decisions: the ECB strongly welcomes the role envisaged for the central banks of issue under the proposed regulation, which will enable the members of the ESCB to have meaningful and effective involvement in decision-making on matters of direct relevance to the fulfilment of the basic tasks of the ESCB under the Treaties, and the achievement of its primary objective of maintaining price stability. The ECB has a number of comments in this regard.

First, where the proposed regulation clarifies that the consent of the central bank of issue must be obtained 'in respect of any aspect of those decisions relating to the carrying out of their monetary policy tasks', it should be emphasised that this phrase is intended to clarify the monetary policy context in which the central bank of issue carries out its role and the purpose the role fulfils. Moreover, with regard to which draft decisions should be subject to the consent of the central bank of issue, the ECB considers that the proposed regulation should ensure the involvement of the central bank of issue regarding certain further key aspects of CCP risk management. The ECB considers that in relation to both Union and third-country CCPs, the consent of the central bank of issue should also be required regarding draft decisions taken in respect of the CCP's margin requirements.

Review and assessment: The ECB underlines that the review and evaluation process, as amended by the proposed regulation, will fulfill the objective of ensuring that CCPs are in a permanent position to comply with Regulation (EU) No 648/2012. According to the ECB, an important corollary of the requirements of the Regulation would be the consultation of the issuing central bank during the review and appraisal process, when it is considered necessary by the competent authority to ensure that the said bank can assume the role assigned to it by the proposed regulation.

Review and evaluation: the ECB underlines that the review and evaluation process, as amended by the proposed regulation, will serve the key purpose of ensuring that CCPs comply with Regulation (EU) No 648/2012. According to the ECB, the consultation of the central bank of issue in the review and evaluation process, where deemed necessary by the competent authority to ensure that the central bank of issue can fulfil its role under the proposed regulation, would be an important corollary to the requirements.

ECB advisory role: the ECB considers that it should be consulted in due time on any draft Union acts, including draft delegated and implementing acts, falling within its fields of competence.

Cooperation and exchange of information between the CCP Executive Session and the supervisory colleges: the ECB notes that the CCP Executive Session does not include all members of the supervisory colleges, and does not include the European Systemic Risk Board (ESRB).

In order to ensure that the ESRB and the supervisory college members which are not also members of the CCP Executive Session have all the relevant information necessary for the purpose of carrying out their tasks, it is crucial that there is an obligation to exchange information between the CCP Executive Session and the ESRB and the other supervisory college members which are not members of the CCP Executive Session.

The ECB as a non-voting member of the ESMA Board of Supervisors: the ECB considers that it is also vital for the ECB be included as a non-voting member of the ESMA Board of Supervisors, to ensure effective cooperation, coordination and exchange of information between central banks and supervisory authorities, and to ensure that the guidelines, recommendations and other practical instruments and convergence tools developed by the ESMA Board of Supervisors take into account the ECB's perspective and expertise.

Interaction with the proposed regulation on a framework for the recovery and resolution of central counterparties: the ECB would see merit in promoting the consistency and effective interaction of recovery and resolution plans across CCPs, and in monitoring and mitigating their aggregate risk implications for financial stability in the Union.