

# Review of the European Market Infrastructure Regulation (EMIR)

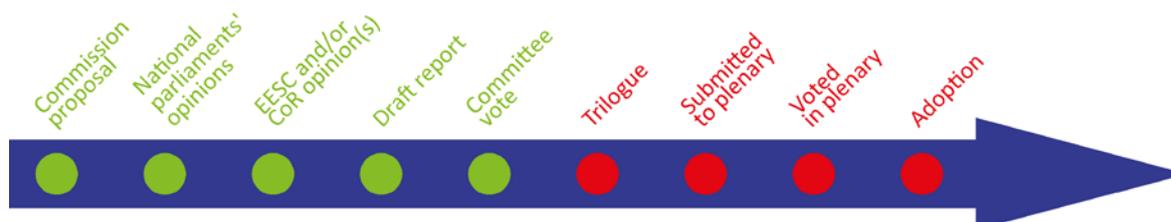
## Updated rules on supervision of central counterparties (CCPs)

### OVERVIEW

The increasing importance of central counterparties (CCPs) and challenges such as the United Kingdom's withdrawal from the EU call for a more comprehensive supervision of CCPs in EU and non-EU countries to secure financial market infrastructure and build confidence. In June 2017, the Commission proposed amendments to Regulation (EU) No 1095/2010 (ESMA – European Securities and Markets Authority) and Regulation (EU) No 648/2012 (EMIR – European Market Infrastructure), to strengthen the regulatory framework: EU CCPs would be supervised by national authorities in agreement with ESMA, and third-country CCPs subject to different requirements depending on whether (or not) they are systemically important. The European Parliament's Economic and Monetary Affairs Committee (ECON) adopted its report in May 2018, and the Council agreed its position in November. Trilogue negotiations are now under way.

**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**

<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	COM(2017) 331 13.6.2017
<i>Rapporteur:</i>	Danuta Maria Hübner (EPP, Poland)	2017/0136(COD)
<i>Shadow rapporteurs:</i>	Roberto Gualtieri (S&D, Italy) Kay Swinburne (ECR, United Kingdom) Petr Ježek (ALDE, Czech Republic) Matt Carthy (GUE/NGL, Ireland) Philippe Lamberts (Greens/EFA, Belgium) Jörg Meuthen (EFDD, Germany)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Trilogue negotiations	



## Introduction

Financial market infrastructures (FMIs), which include payments systems,<sup>1</sup> central securities depositories (CSDs),<sup>2</sup> securities settlement systems (SSSs),<sup>3</sup> central counterparties (CCPs)<sup>4</sup> and trade repositories (TRs),<sup>5</sup> are vital components of the financial system: they enable market participants to conclude transactions with one another in an effective and orderly manner.

## Context

Once the buyer and the seller of a financial instrument conclude a transaction, the [post-trading system](#) ensures that the trade agreements are effectively enforced, by [matching](#) all buy and sell orders in the market (clearing), transferring securities and cash under the contract (settlement) and safekeeping securities (custody).

CCPs play a [key role](#) in clearing, standing between the buyer and the seller (typically banks or other financial institutions). On a bilateral basis, CCPs reduce the 'counterparty risk', which is the risk that a financial transaction is not successful because the buyer is unable to pay the price or the seller unable to deliver the securities. On a multilateral basis, CCPs reduce exposure but mutualise risk, by netting<sup>6</sup> down the payments that each member participating in the system ('clearing member') is required to pay to or receive from every other member. The single net payment that each clearing member is expected either to pay or receive as a result of netting is, in general, significantly lower than the aggregate bilateral exposures that clearing members would have incurred if the transactions had not been centrally cleared. Clearing members have direct access to central clearing by virtue of contractual arrangements with CCPs (referred to as the 'rulebook'), governing all clearing activities. Clearing members also provide their clients (banks and other financial institutions) with indirect access to CCPs. Through their activity, CCPs manage essential risks in financial markets, such as liquidity risk<sup>7</sup> and market risk,<sup>8</sup> thereby improving the overall resilience of the financial system.

## Existing situation

### Authorisation and recognition under EMIR

The European Market Infrastructure Regulation (EMIR) [introduces](#) a harmonised set of organisational, business conduct and prudential requirements for CCPs. Firms wanting to offer CCP services in the EU must seek authorisation under EMIR. National securities regulators are responsible for the authorisation of EU-based CCPs. More specifically, pursuant to Article 18(1) of EMIR, an EU-based CCP's competent authority shall establish, manage and chair a CCP college of supervisors to facilitate the granting or refusal of authorisation under Article 17 of EMIR. Pursuant to Article 18(2) of EMIR, the college is comprised of:

- (a) the European Securities and Markets Authority (ESMA),
- (b) the CCP's competent authority,
- (c) the competent authorities responsible for the supervision of the clearing members of the CCP established in the three Member States with the largest contributions to the default fund of the CCP referred to in Article 42 on an aggregate basis over a one-year period,
- (d) the competent authorities responsible for the supervision of trading venues served by the CCP,
- (e) the competent authorities supervising CCPs with which the CCP has established interoperability arrangements,
- (f) the competent authorities supervising central securities depositories to which the CCP is linked,
- (g) the relevant members of the European System of Central Banks (ESCB) responsible for the oversight of the CCP and the relevant members of the ESCB responsible for the oversight of the CCPs with which the CCP has established interoperability arrangements,

- (h) the central banks of issue of the most relevant Union currencies of the financial instruments cleared.

Following the establishment of the [Single Supervisory Mechanism](#) (SSM) under [Council Regulation \(EU\) No 1024/2013](#), ESMA published an [opinion](#) on the composition of the CCP colleges. The opinion clarifies that, where the European Central Bank (ECB) has taken over the direct prudential supervision of any of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP, it should join the college pursuant to Article 18(2)(c) of EMIR.

Pursuant to Article 25(6) of EMIR, CCPs established in third countries who want to offer clearing services within the EU need to be recognised by ESMA. Prior to recognition, the European Commission must adopt an implementing act determining, amongst other issues, that the legal and supervisory arrangements of the relevant third country (non-EU country) imposes legally binding requirements that are equivalent to those contained in Title IV of EMIR ([equivalence decision](#)).

Equivalence assessments under EMIR are undertaken using an outcome-based approach. This means that the authority in the third country must be able to show that its rules achieve the same objectives as those in the EU, i.e. a robust CCP framework promoting financial stability through a reduction in systemic risk. It does not mean that identical rules are required to be in place in that country.

In accordance with Article 25(6) of EMIR, three conditions need to be fulfilled in order to determine that the legal and supervisory arrangements of a third country regarding CCPs authorised therein are equivalent to those laid down in that regulation:

- (a) CCPs authorised in a third country must comply with legally binding requirements that are equivalent to the requirements laid down in Title IV of EMIR;
- (b) the legal and supervisory arrangements in respect of CCPs established in the third country must further provide for effective supervision and enforcement of CCPs in that jurisdiction on an ongoing basis;
- (c) the legal and supervisory arrangements of the third country must include an effective equivalent system for the recognition of CCPs authorised under third country legal regimes ('third country CCPs').

## Amendments to European System of Central Banks/ECB statute

On 7 July 2017, in accordance with Article 129(3) of the Treaty on the Functioning of the European Union (TFEU), the ECB submitted a [recommendation](#) for a decision of the European Parliament and of the Council amending Article 22 of the Statute of the ESCB in order to provide the ECB with the power to regulate clearing systems, in particular central counterparties.<sup>9</sup>

The European Commission issued a favourable [opinion](#) on the ECB's recommendation, arguing that providing the ECB with the power necessary to regulate the activity of clearing systems would allow it to fully perform the enhanced role envisaged for central banks of issue in the Commission's proposal to review the framework for CCP supervision outlined in EMIR. It suggested, however, rephrasing the ECB's recommended amendment to Article 22 of the ESCB and ECB Statute, to emphasise the fact that the ECB's regulatory and decision-making powers aim at achieving the objectives of the ESCB and the performance of its basic tasks.

The European Parliament's Committee for economic and monetary issues (ECON) and Committee for constitutional affairs (AFCO) adopted their [report](#) on 19 June 2018. The report was subsequently adopted in plenary on 4 July 2018.

## Parliament's starting position

In its [resolution](#) of 9 July 2015 on 'Building a capital markets union', Parliament emphasised that 'the legal and supervisory frameworks should play a fundamental role in avoiding excessive risk-taking

and instability in financial markets'; it further underlined that 'a strong CMU project needs to be accompanied by strong EU-wide and national supervision including adequate macroprudential instruments'; lastly, it stressed that 'among possible options, a stronger role could be attributed to the European Securities and Markets Authority (ESMA) in improving supervisory convergence'.

## Preparation of the proposal

The proposal built on several [public consultations](#) held between 2015 and 2017. According to the [Commission](#), the majority of respondents expressed support for increased supervisory convergence at EU level over the supervision of CCPs, due to the increased cross-border activity, the systemic importance of CCPs and the importance of access to liquidity in the euro area.

In its communication on '[Responding to challenges for critical financial market infrastructures and further developing the Capital Markets Union](#)', published on 4 May 2017, the Commission brought forward the important issue stemming from the United Kingdom's intended withdrawal from the EU, namely that a substantial volume of transactions denominated in euro would cease to be cleared in the EU and would no longer be subject to EMIR and the EU supervisory architecture.

Prior to the proposal, the Commission conducted an [impact assessment](#) of possible policy options regarding (i) the consistency of supervisory arrangements for CCPs established in the EU, and (ii) the mitigation of third-country CCP risks.

With regards to the first issue, the Commission considered: maintaining the status quo; establishing an EU supervisory mechanism; and establishing a single EU supervisor. It chose to establish a supervisory mechanism, 'leaving existing supervisory powers with national supervisors in view of their fiscal responsibility, while creating an EU supervisory mechanism to handle areas of common interest on a more centralised basis'.

Relative to the second issue, the Commission considered: maintaining the status quo; requiring third-country CCPs to be established and authorised in the EU in order to provide services to EU counterparties or trading venues, or clearing services in EU currencies; making the degree and intensity of EU supervision proportionate and dependent on the risks posed by third-country CCPs to the EU. The impact assessment concluded that the third option was the most appropriate 'to achieve the objective of enhancing the EU's ability to monitor, identify and mitigate third-country CCP risks'.

In January 2018, EPRS published an [initial appraisal](#) of the Commission's impact assessment (IA). It finds that the Commission's IA clearly identifies the problems that require EU action, as well as their drivers and consequences. The objectives of the initiative appear to be coherent with the analysis, and are relevant and measurable. The Commission IA analyses a limited number of alternatives to the status quo in depth: two for each of the objectives, which deal respectively with EU and third-country central counterparties. These options are phrased in rather general terms and are left open to further development. The analysis is based on relevant sources and the Commission's expert knowledge in the field. However, the IA is considered to have been prepared in a rather limited time-span and could have benefited from further work.

## The changes the proposal would bring

The supervisory mechanism stemming from the Commission's initiative would articulate as follows:

- (a) CCPs established in the EU would be supervised by national authorities in agreement with ESMA. To this end, a new CCP executive session within ESMA would be established. The existing colleges of supervisors would continue to act as bodies that promote cooperation and take joint decisions, as they would include all the authorities likely to be affected by the activities of the CCP, such as the authorities responsible for trading venues and central securities depositories (CSDs);

- (b) Third-country CCPs would be supervised on the basis of a two-tier system, distinguishing between non-systemically important CCPs ('Tier 1 CCPs') and systemically important CCPs ('Tier 2 CCPs'), which would be subject to stricter requirements.

To build this architecture, the [proposed regulation](#) amends two existing regulations: Regulation (EU) No 1095/2010 ('ESMA') and Regulation (EU) No 648/2012 ('EMIR').

With regards to the ESMA Regulation, a newly-created supervisory format within the Board of Supervisors of ESMA – the CCP executive session – would be established, which would also assume tasks in the field of supervision of third-country CCPs. Amendments would set out the organisation of the CCP executive sessions (new Articles 44a to 44c)<sup>10</sup> and guarantee the accountability and independence of its members (new Article 48a, and amendments to Articles 49 and 50), as well as regulate the interactions between the CCP executive session and the tasks of the Executive Director of ESMA (amendments to Articles 53, 63 and 70). Lastly, Article 35 would be amended to enhance ESMA's ability to collect information.

With regard to EMIR, amendments would establish the role of the CCP executive session relative to the authorisation and supervision of CCPs. They would also clarify the assignment of responsibilities between authorities, according to which national competent authorities would continue to exercise their supervisory responsibilities, but prior consent from ESMA (and where appropriate, from the relevant central bank(s) of issue)<sup>11</sup> would be required for certain decisions. All CCPs would pay fees for specific administrative and supervisory tasks fulfilled by ESMA (new Articles 21a to 21c).

Furthermore, amendments would enhance the equivalence regime for third-country CCP and their recognition. According to the two-tier approach (Amendment to Article 25 and new Article 25a), the CCPs that ESMA would determine as not systemically important or not likely to become so ('Tier 1'), would continue to be subject to the current arrangements and conditions for third-country equivalence decisions adopted by the Commission, while those deemed to be systemically important or likely to become so in the near future ('Tier 2 CCPs') would have to meet further conditions to provide clearing services or activities in the EU. A limited subset of the Tier 2 CCPs ('substantially systemically important' CCPs) may be of such systemic importance that additional safeguards would be envisaged to mitigate potential risks. These may include a decision allowing a CCP to provide services in the Union if it is authorised under EMIR and establishes itself in the EU ('location policy'). ESMA's supervisory powers would be enhanced subsequently, in particular as regards access to information, general investigations, on-site inspections and powers in case of infringement (new Articles 25 paragraphs (2a) to (2c), 25a to 25m). A new role would be given to ESMA and the relevant central bank(s) of issue in the supervision of recognised third-country CCPs (new Articles 25b to 25n).

Finally, Article 49 – which related to ESMA and the national competent authority's validation of the models and parameters used by the CCP to calculate its margin requirements – would be amended to clarify the conditions under which the CCP may obtain the validation of significant changes to its adopted models and parameters.

On 20 September 2017, the Commission put forward an [additional proposal](#) amending the pending proposal. It was included in an [overall package](#) aimed at enhancing the supervision of EU financial markets by improving the operation of the European Supervisory Authorities (ESAs). The supplementary proposal would specifically allocate an additional task to the CCP executive session, in view of the effective establishment of the latter, prior to ESAs reform.

## Advisory committees

On 20 September 2017, the European Economic and Social Committee (EESC) adopted its [opinion](#) on the Commission proposals in plenary. The EESC welcomes the Commission's initiative on establishing a new supervisory mechanism within ESMA and recommends that it allocates the

necessary financial resources for training the staff that are to work in the new ESMA department, taking the complexity of the supervisory activity it will have to carry out into account.

## National parliaments

The subsidiarity deadline was set as 16 October 2017. The proposal was examined by the national parliaments of 15 Member States. The Swedish Parliament sent a [reasoned opinion](#) on 12 October 2017, expressing the following concerns: (i) that the Commission's proposal 'contains explicit requirements for consent from ESMA and relevant central banks as part of the supervisory process', which risks 'creat[ing] an ineffective supervisory structure'; (ii) that the 'proposal does not take due consideration of existing tools to promote supervisory convergence within the EU'; (iii) that the 'proposal concerning supervision of central counterparties in third countries would in practice mean introducing a requirement for central counterparties of systemic importance located in third countries to relocate to the EU', without conducting an appropriate analysis of the consequences of implementing such a relocation requirement beforehand; (iv) lastly, that the proposal of 'giving relevant central banks a mandate to supervise central counterparties ... is not sufficiently justified'. For the above reasons, the Swedish Parliament considered the proposal to conflict with the subsidiarity principle.

## European Central Bank

On 4 October 2017, the ECB adopted its [opinion](#) on the Commission proposal. The ECB welcomes the Commission proposal but makes a few specific observations on (i) the requirement to obtain the consent of the central bank of issue regarding certain draft decisions; (ii) the consultation of the central bank of issue in the review and evaluation process under Article 21; (iii) its advisory role regarding draft delegated and implementing acts; (iv) the issue of cooperation and exchange of information between the CCP executive session and the supervisory colleges; (v) the need for the ECB to be included as a non-voting member of the ESMA board of supervisors, and (vi) the interaction of the proposed regulation, with the other proposed regulation, on a framework for the recovery and resolution of CCPs.

## Stakeholders' views<sup>12</sup>

The European Federation of Investors and Financial Services Users ([BETTER FINANCE](#)) supported the main elements of this proposal. It noted, however, that 'more supervision from EU authorities must not be exercised to the detriment of the principles of proportionality and subsidiarity'. In addition, it warned that 'increasing the supervisory system and this location policy may restrict the choice of the clearing venues which could lead to a geographic concentration', which could result in price increases for financial services users.

The European Association of CCP Clearing Houses ([EACH](#)) agreed with the objective of the European Commission to improve the current system of EMIR colleges. It noted, however, that the executive session was not – in its view – the right supervisory architecture for EU CCPs and proposed that, whatever improvements are suggested for the EU supervisory framework, they should take specific characteristics listed in the document into account.

The [London Stock Exchange Group](#) (which has majority ownership of the multi-asset global CCP operator, LCH Group) expressed general support for the Commission proposal's goal. However, the group raised both general<sup>13</sup> and specific<sup>14</sup> remarks in relation to EU and third-country CCP supervision.

## Legislative process

On 25 May 2018, the **ECON committee** adopted its [report](#) on the Commission proposal.

The report inserts an Article 15(1a), relative to the extension of activities and services of a CCP, adding that the extension of business to new activities or services would require an extension of

authorisation, if one of the specific conditions provided in the article were met. The rest of the article tasks ESMA, in cooperation with the ESBC, to develop draft regulatory technical standards (RTS) establishing a list of indicators further defining the aforementioned conditions.

In Article 18(2)(c), relating to the college of supervisors, the report adds that the participation of representatives of the competent authorities responsible for the supervision of the three clearing members of the CCP with the largest contributions to the default fund of the CCP would be conditional on their expressing an interest in participating in this college. The report further proposes (in a new Article 18(2)(ca)) that participation in this college would be extended to competent authorities of other clearing members subject to the consent of the CCP's competent authority. In the same article (new paragraph 4a), the report proposes that, should any member of the college assess that a CCP's risk management practices do not comply with the EMIR requirements, it may inform the competent authority and the college and request a discussion. Following that discussion, if at least one third<sup>15</sup> of college members support the drafting of a recommendation to address the issue identified, the Chair would ask the college to draft such a recommendation. The college may adopt the recommendation by a simple majority of its members.

As regards the division of competences between ESMA and national competent authorities regarding the supervision of EU CCPs, a new Article 21a provides that important elements for the functioning of the CCP – ranging from authorisation and its withdrawal (Articles 14 and 20) to conduct of business (Article 36) to models and parameters adopted to calculate margin requirements (Article 49) – would be subject to ESMA's binding consent. For other elements with cross-border relevance, a consultative decision from ESMA would be required. The decisions pertaining to those issues with a close link to fiscal responsibility would remain national. These concern, for instance, exposure management (Article 40); margin requirements (Article 41); default funds (Article 42); other financial resources (Article 43); and default procedures (Article 48). The same would apply to certain issues for which there is no specific added value in moving the decision-taking to the European level.

New Article 21aa stipulates that, with regard to decisions taken in accordance with specific articles of the regulation, the CCP Supervisory Committee would consult each central bank of issue of the most relevant EU currencies of the financial instruments cleared. Those central banks (which are part of the college) would respond to the request within 10 working days, except in emergencies, where the deadline would be 24 hours. The CCP supervisory committee or relevant competent authority would in turn have to comply with the amendments proposed by the relevant central bank(s).

In a new Article 21c, relative to the fees CCP must pay, the report proposes those fees to be proportionate to the turnover of the CCP concerned and fully cover ESMA's necessary expenditure relating to either the authorisation or recognition of the CCP, and to the performance of its tasks. In addition, the RTS to be drafted by the Commission should specify the types of fees; the matters for which they are due; their amount; and the manner in which they are to be paid.

A new Article 22a provides that a permanent internal CCP supervisory committee made up of relevant competent authorities would be established within ESMA, instead of the CCP executive session of the board of supervisors proposed by the Commission. The supervisory committee would be tasked with submitting complete draft decisions for adoption to the board of supervisors. The remainder of the article lays down detailed rules relative to the committee's composition and its members' appointment, granting an enhanced role in the process to the European Parliament and to the Council. Rules are also set out on the committee's meetings and its role. Decision-making within the CCP supervisory committee (simple majority) would be dealt with in Article 22d, with a nuanced involvement of the Board of Supervisors based on the matter of the decision (new Article 22e).

A new Article 22b ensures the independence of the members of the supervisory committee and set certain obligations for them in the period before taking up this position and after completing this role.

A new Article 22c provides the possibility for the Parliament or the Council to invite more people (i.e. the Chair, Vice-Chair or Directors of the committee) to make a statement before the Parliament and answer any questions put by its Members. At least 15 days before making the aforementioned statement, or otherwise where requested, the Chair of the supervisory committee would report in writing on the activities of the supervisory committee to Parliament. There would also be the possibility, under specific conditions, for the Chair and Vice-Chairs of the competent committee of the European Parliament to invite the Chair of the supervisory committee for a (confidential) oral discussion with them. Lastly, the Chair would report any relevant information requested by Parliament, on an ad hoc basis.

The report amends the three new paragraphs (2a-2c) in Article 25, together with new Article 25a, which deals with the recognition of third-country CCPs. In particular, the report would extend the criteria that need to be taken into account in order to determine whether a CCP is systemically important or likely to become so (2a); it would specify the requirements eventually imposed by 'the central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP', with which that CCP would have to comply to be recognised by ESMA. Those include general EMIR requirements (Title IV and Title V), as far as they fall within the competences of the central bank of issue and relate to specific purposes. In the context of the analysis conducted by ESMA and the central banks of issue,<sup>16</sup> the report specifies the elements of analysis that would have to accompany the recommendation, ensuring it is granular and that it takes account of the monetary and liquidity risks posed by the CCP (2c).

The report also proposes amendments to ensure the effective cooperation (consultation, exchange of information, notification) between ESMA and the central banks of issue, as well as with the competent authorities of third countries (Article 25, new paragraphs (7a) and (7b)).

Proposed Article 25b is also to be amended, relative to the ongoing compliance with the conditions for recognition, by ensuring that, if a 'Tier 2' CCP does not comply with the conditions for recognition, a supervisory response procedure would be triggered, which may well result in withdrawal of recognition.

Lastly, the report would provide for the creation of a college for third country CCPs (Article 25(ba)), to facilitate the exchange of information.

The **Council** adopted its [mandate for negotiations](#) with the European Parliament on 27 November 2018. Among other things, it makes the following important amendments:

The Council document does not retain the executive session proposed by the Commission (See 'The changes the proposal would bring'). Instead, it amends EMIR to establish a permanent internal committee within ESMA, which would meet under two configurations: a 'Third country CCP Supervisory Committee' (third-country configuration) and a 'Supervisory Convergence Committee' (EU configuration) (Article 24a). The article also sets the composition of the committees (chair, competent authorities, central banks of issue), its tasks and the way decisions are taken, as well as ESMA's coordination and support role.

In the proposed changes to article 25 (recognition of a third-country CCP), Council provides that, in determining whether a CCP is systemically important or likely to become so for the financial stability of the EU or of one or more of its Member States (Tier 2 CCP), ESMA should also consult the [European Systemic Risk Board](#) (ESRB) and the central banks of issue of all Union currencies of the financial instruments cleared or to be cleared by the CCP. The amended article includes more elements to be taken into account for this determination, such as 'the nature, size and complexity of the CCP's business' (sub-point (a)) and the CCP's interactions with other financial market infrastructures, financial institutions and the broader financial system' (sub-point (e)), as well as 'the availability of alternative clearing services in respective EU currency to clearing members, their clients and indirect clients established in the Union' (new sub-point (d)).

Point 2b deals with additional rules the CCP must comply with to be recognised and authorised to operate in the EU, if ESMA determines it is systemically important (Tier 1) or likely to be systemically important (Tier 2). In sub-point 2b, the Council reduces the period central banks of issue would have at their disposal to provide ESMA with written confirmation, by 30 days relative to the Commission proposal, and adds specific requirements that the CCP must comply with. Lastly, the Council adds in point 2c, that, the possibility for ESMA to conclude, on the basis of a fully reasoned assessment, after consulting the ESRB and in agreement with the central banks of issue concerned, that a CCP or some of its clearing services are of such substantial systemic importance that the CCP should not be recognised, should be a measure of last resort.

Additionally, in this last case, the Council also adds that the Commission may adopt an implementing act specifying an appropriate adaptation period (not exceeding 2 years) for the CCP, the conditions under which that CCP may be temporarily recognised during that adaptation period, as well as possible measures taken during that period to limit potential costs to clearing members and their clients, particularly those established in the EU.

In newly proposed article 25b (relative to ongoing compliance with the conditions for recognition), the Council introduces the obligation for ESMA to obtain the consent of the relevant central bank of issue in respect of any aspect of decisions relating to the carrying out of their monetary policy tasks, and adds that central banks of issue may contribute to the assessment of the resilience of recognised CCPs to adverse market developments.

The Council sets out a new article 25ba, according to which ESMA should establish a supervisory college for third-country CCPs to facilitate the sharing of information. The article specifies the composition of the college, powers of its members, and adds that its establishment and functioning would be based on a written agreement between its members. Relevant additions regarding this college are made in articles 25d and 89 of EMIR. In article 25e, Council envisages the possibility for central banks of issue of the currencies of the financial instruments cleared by the CCP to request ESMA participate in its on-site inspections, where relevant for the carrying out of their monetary policy tasks; also, that ESMA's third-country CCP college should be informed of any findings that may be relevant for the execution of their tasks. The Council also sets the obligation for the assessment of the competent authority, concerning notification in case of CCP stake acquisition, to be subject to an opinion of the college (Article 31(2)). A similar situation would apply when a CCP decides to outsource major activities linked to risk management (article 35 par. 1), where the Council proposes that the decision of the competent authority is subject to an opinion of the college.

With regard to the review of models, stress testing and back testing (proposed new paragraphs 1a, 1b, 1c, 1d and 1e to Article 49), the Council suggests changing the deadlines proposed by the Commission. It further adds a paragraph 5 empowering ESMA to develop draft regulatory technical standards (RTS) specifying the conditions under which changes to the models and parameters a CCP adopts to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms are significant, as well as the procedure to consult the college on whether these conditions are met or not.

Finally, the Council inserts two new paragraphs (6 and 7) in article 85. Under the first, ESMA should submit a report to the Commission assessing whether the risk posed by the CCP to the financial stability of the EU, or one or more of its Member States, is sufficiently mitigated. After receiving that report, the Commission should, within 12 months of the report's transmission, itself prepare a report on the application of the provisions of that implementing act and submit it to the Parliament and Council. Under the second paragraph, 3.5 years after the regulation enters into force, the Commission should review the functioning of the CCP Supervisory Committee and submit a report to the Parliament and Council, assessing (in light of those years' experience), the committee's effectiveness in fostering the convergence and coherence of the application of the regulation among the competent authorities and colleges, in ensuring the effectiveness of recognition and

supervision of third-country CCPs and in guaranteeing a level-playing field among authorised EU CCPs and between authorised EU CCPs and recognised third-country CCPs.

Trilogue negotiations between Council and Parliament are ongoing.

## EP SUPPORTING ANALYSIS

Collovà C. with Maistro D., [European Market Infrastructure Regulation – Authorisation of central counterparties \(CCPs\) and recognition of third-country CCPs](#), Initial Appraisal, EPRS, European Parliament, January 2018.

Stamegna C., [Recovery and resolution of central counterparties \(CCPs\)](#), EPRS, European Parliament, April 2018.

[The euro-area denominated payment systems and the conduct of monetary policy: some considerations ahead of Brexit](#), Policy Department Economic and Scientific Policy, European Parliament, February 2018.

[Brexit, financial stability and the supervision of clearing systems](#), Policy Department Economic and Scientific Policy, European Parliament, February 2018.

[Note on the interactions between payment systems and monetary policy](#), Policy Department Economic and Scientific Policy, European Parliament, February 2018.

## OTHER SOURCES

[EMIR and ESMA Regulations: procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs](#), Legislative Observatory (OEIL), European Parliament.

## ENDNOTES

- <sup>1</sup> In general, the term '[payment system](#)' refers to the complete set of instruments, intermediaries, rules, procedures, processes, and interbank funds transfer systems that facilitate the circulation of money in a country or currency area.
- <sup>2</sup> A [central securities depository](#) (CSD) is an entity that provides a central point for depositing financial instruments ('securities'), for example bonds and shares. CSDs' clients are typically financial institutions themselves (such as custodian banks and brokers). Although CSDs across the world might have very different activities, the definition introduced by [Regulation \(EU\) No 909/2014](#) describes the core functions performed by a CSD.
- <sup>3</sup> A [securities settlement system](#) (SSS) is a system that allows the transfer of securities, either free of payment (FOP) or against payment (delivery versus payment, DVP).
- <sup>4</sup> A [central counterparty](#) (CCP) is an entity that interposes itself, in one or more markets, between the counterparties to the contracts traded, becoming the buyer to every seller and the seller to every buyer and thereby guaranteeing the performance of open contracts.
- <sup>5</sup> [Trade repositories](#) (TRs) centrally collect and maintain the records of derivatives. They play a central role in enhancing the transparency of derivative markets and reducing risks to financial stability.
- <sup>6</sup> [Netting](#) entails offsetting the value of multiple positions or payments due to be exchanged between two or more parties, and can be used to determine which party is owed remuneration in a multiparty agreement.
- <sup>7</sup> Liquidity risk is the risk of not being able to liquidate (sell and receive money in return) an investment.
- <sup>8</sup> [Market risk](#) is the risk of losses in on- and off-balance sheet positions arising from adverse movements in market prices.
- <sup>9</sup> To promote the proper functioning of payment systems, ultimately to maintain price stability.
- <sup>10</sup> Both these amendments (specifically Article 44a), as well as the amendments to EMIR Article 18(2) strengthen the role of the European Central Bank, through its permanent membership in the CCP executive session and in the supervisory colleges.
- <sup>11</sup> The bank(s) [issuing the currency](#) in which transactions are denominated.
- <sup>12</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.
- <sup>13</sup> The general remarks regard the complexities of the proposed supervisory structure for EU CCPs, as well as the proposed third country regime and framework for the regime.
- <sup>14</sup> Concerning the supervision of EU CCPs, the specific comments relate to ESMA's supervisory responsibilities and the approval process. Concerning the supervision of third-country CCPs, the LSE's comment deal with the definition of systemic importance, the determination of systemic importance of third-country CCPs, the requirements for Tier 2 CCPs, the potential denial of recognition/requirement to force relocation of third country CCPs (Article 25(2c), the enhanced supervision, the transparency of recognition and equivalence processes and the transitional provisions.
- <sup>15</sup> Other than the member requesting the discussion.
- <sup>16</sup> The Commission proposal would give ESMA the possibility – under specific conditions – to recommend that the Commission adopts a delegated act prohibiting a specific CCP from being recognised, or allowing some or all services provided by that CCP to be provided only to clearing members and trading venues established in the EU and only by an authorised CCP.

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