DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs


Rapporteur: Sharon Bowles
SHORT JUSTIFICATION

The financial crisis raised concerns regarding the resilience and transparency of the over-the-counter (OTC) derivatives market. The G20 agreed that:

All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories.

This regulation sets out the conditions for authorising Central Counterparties (CCPs), the criteria to examine to ensure appropriate characteristics for central clearing, and the reporting of derivatives to trade repositories where the aggregate information can be used inter alia for analysis of systemic risk.

Central clearing can itself pose systemic risks unless introduced appropriately, so CCPs must have robust risk and default management strategies that do not put taxpayers in the front line. Maintaining a diverse and competitive market plays its part in this for which pricing should be transparent and tying arrangements avoided.

While promoting the resilience and transparency of derivatives markets, regulation must equally maintain the efficiency of these markets for hedging by end-users – be they financial or non-financial. Maintaining the international nature of this market promotes both these objectives when underpinned by cooperation between supervisors and convergent international standards.

CCPs are regulated by bank prudential regulators in most Member States and at the European level it will be EBA that has much of the expertise, so it is essential that ESMA and EBA work closely together. These ESAs will have to make decisions about suitability for clearing following a pragmatic approach to the Meroni judgement.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation
Recital 16

<table>
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<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(16) Where appropriate, rules applicable to financial counterparties, should also apply to non-financial counterparties. It is</td>
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recognised that non-financial counterparties use OTC-contracts in order to cover themselves against commercial risks directly linked to their commercial activities. Consequently, in determining whether a non-financial counterparty should be subject to the clearing obligation, consideration should be given to the purpose for which that non-financial counterparty uses OTC derivatives and to the size of the exposures that it has in those instruments. When establishing the threshold for the clearing obligation, ESMA should consult all relevant authorities, as for example regulators responsible for commodity markets, in order to ensure that the particularities of these sectors are fully taken into account. Moreover, by 31 December 2013, the Commission shall assess the systemic importance of the transactions of non-financial firms in OTC derivatives in different sectors, including the energy sector.

Amendment 2

Proposal for a regulation
Recital 37

Text proposed by the Commission

(37) A CCP should have a sound risk management framework to manage credit risks, liquidity risks, operational and other risks, including the risks that it bears or poses to other entities as a result of interdependencies. A CCP should have adequate procedures and mechanisms in

Amendment

(37) A CCP should have a sound risk management framework to manage credit risks, liquidity risks, operational and other risks, including the risks that it bears or poses to other entities as a result of interdependencies. A CCP should have adequate procedures and mechanisms in
place to deal with the default of a clearing member. In order to minimise the contagion risk of such a default, the CCP should have in place stringent participation requirements, collect appropriate initial margins, maintain a default fund and other financial resources to cover potential losses. CCPs' default management strategies should be sound, and not transfer risk to the taxpayer. In particular, liquidity arrangements, whether through commercial or central banks, should not be a substitute for their own liquidity risk mitigation strategies.

Amendment 3

Proposal for a regulation
Article 1 — paragraph 1

Text proposed by the Commission

1. This Regulation lays down uniform requirements for derivative contracts set out in Annex I Section C numbers (4) to (10) of Directive 2004/39/EC that are traded over-the-counter and lays down uniform requirements for the performance of activities of central counterparties and trade repositories.

Amendment

1. This Regulation lays down uniform requirements for derivative contracts set out in Annex I Section C numbers (4) to (10) of Directive 2004/39/EC, and subject to any amendment and implementing measures thereto, and lays down uniform requirements for the performance of activities of central counterparties and trade repositories.

Justification

This extends the scope of the Regulation to all derivatives, in order to provide consistency in market rules, and ensure effective mitigation of counterparty risk. It also does not pre-empt exemptions that may be made under the MiFID review.
Amendment 4
Proposal for a regulation
Article 1 – paragraph 2

_text proposed by the Commission_

2. This Regulation shall apply to central counterparties, financial counterparties and to trade repositories. It shall apply to non-financial counterparties where so provided. 

Amendment

2. This Regulation shall apply to central counterparties, financial counterparties and to trade repositories. It shall apply to non-financial counterparties where so provided _and to branches in the Union of undertakings established outside the Union, where so provided._

Or. en

Amendment 5
Proposal for a regulation
Article 1 – paragraph 4 – point a

_text proposed by the Commission_

(a) the Members of the European System of Central Banks and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

Amendment

(a) the Members of the European System of Central Banks and other EU and EEA national bodies performing similar functions and other EU and EEA public bodies charged with or intervening in the management of the public debt _nor to equivalent national bodies;_

Or. en

Amendment 6
Proposal for a regulation
Article 2 – point 1

_text proposed by the Commission_

(1) 'central counterparty (CCP)' means an entity that legally interposes itself between the counterparties to the contracts traded within one or more financial markets,

Amendment

(1) 'central counterparty (CCP)' means an entity that legally interposes itself between the counterparties to the contracts traded within one or more financial markets,
becoming the buyer to every seller and the seller to every buyer and which is responsible for the operation of a clearing system;

becoming the buyer to every seller and the seller to every buyer for the contracts it clears and which is responsible for the operation of a clearing system;

Amendment 7
Proposal for a regulation
Article 2 – point 4

Text proposed by the Commission
(4) 'class of derivatives' means a number of OTC derivative contracts that share common, essential characteristics;

Amendment
(4) 'class of derivatives' means a number of OTC derivative contracts that share sufficient common, essential characteristics to behave in the same way;

Justification
Behaviour is the important criterion, which may not depend solely on essential characteristics.

Amendment 8
Proposal for a regulation
Article 2 – point 5

Text proposed by the Commission
(5) 'over the counter (OTC) derivatives' means derivative contracts whose execution does not take place on a regulated market as defined by Article 4 (1) point 14 of Directive 2004/39/EC;

Amendment
(5) 'over the counter (OTC) derivatives' means derivative contracts whose execution does not take place on a regulated market or multilateral trading facility as defined by Article 4 (1) point 14 or 15 of Directive 2004/39/EC or a third country trading facility that performs a similar function;
Justification

The G20 communiqué referred to 'electronic clearing' rather than 'regulated markets', so it is necessary to include a reference to multilateral trading facilities. There must also be a reference to third country facilities.

Amendment 9

Proposal for a regulation

Article 2 – point 6

Text proposed by the Commission


Amendment


Or. en

Justification

Financial institutions which are exempted under the relevant sectoral directives should not be included within the scope of this Regulation.
Amendment 10

Proposal for a regulation
Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

That clearing obligation shall also apply to financial counterparties and to the non-financial counterparties referred to in Article 7(2) which enter into eligible OTC derivative contracts with third country entities.

Amendment

That clearing obligation shall also apply to financial counterparties and to the non-financial counterparties referred to in Article 7(2) which enter into eligible OTC derivative contracts with third country entities that would be subject to the clearing obligation if they were established in the EU.

Or. en

Amendment 11

Proposal for a regulation
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

2a. The clearing obligation under paragraph 1 shall not apply to OTC derivative contracts concluded by a financial counterparty or non-financial counterparty referred to in Article 7(2) with either a body to which this Regulation does not apply under Article 1(4), or to those OTC derivative contracts concluded with a parent undertaking, subsidiary, or another subsidiary of its parent undertaking.

Amendment

2a. The clearing obligation under paragraph 1 shall not apply to OTC derivative contracts concluded by a financial counterparty or non-financial counterparty referred to in Article 7(2) with either a body to which this Regulation does not apply under Article 1(4), or to those OTC derivative contracts concluded with a parent undertaking, subsidiary, or another subsidiary of its parent undertaking.

Or. en

Justification

In many cases risks may be hedged or managed by one company in a group even when the risks belong to another company in the group. This excludes these intra-group arrangements.
### Amendment 12

**Proposal for a regulation**  
**Article 4 – paragraph 2 – point a**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
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<tbody>
<tr>
<td>(a) whether that class of derivatives is eligible for the clearing obligation pursuant to Article 3;</td>
<td>(a) whether that class of derivatives is eligible for the clearing obligation pursuant to Article 3, <em>and if so eligible</em>;</td>
</tr>
<tr>
<td>Or. en</td>
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### Amendment 13

**Proposal for a regulation**  
**Article 4 – paragraph 2 – point b**

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>(b) the date from which the clearing obligation takes effect.</td>
<td>(b) the date from which the clearing obligation takes effect, <em>which shall be no earlier than six months after the date of publication of the decision under paragraph 4, and shall take into account the factors referred to in point ba</em>;</td>
</tr>
<tr>
<td>Or. en</td>
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</tbody>
</table>

#### Justification

*Users of CCPs will need time to conduct their own due diligence on CCPs and organise their systems and capital.*

### Amendment 14

**Proposal for a regulation**  
**Article 4 – paragraph 2 – point b a (new)**

<table>
<thead>
<tr>
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<td>(ba) where relevant, the modalities associated with onset, phasing, or retrospective effect, where international agreement has been reached in that</td>
<td></td>
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respect.

Or. en

Justification

Retrospective clearing requirements could cause major competitive disadvantages if not coordinated at an international level.

Amendment 15

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the level of standardisation of contractual and economic terms of contracts;

Or. en

Amendment 16

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) level of client protection provided by the CCP.

(e) level of default management and liquidity risk mitigation provided by the CCP;

Or. en

Justification

Client protection must not derive from taxpayer guarantee.
Amendment 17

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 1 – point e a (new)

Text proposed by the Commission

\[(ea)\] cost of clearing and impact on competitiveness;

Or. en

Amendment 18

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 1 – point e b (new)

Text proposed by the Commission

\[(eb)\] convergence with international norms and standards.

Or. en

Amendment 19

Proposal for a regulation
Article 4 – paragraph 5

Text proposed by the Commission

5. ESMA shall, on its own initiative and in consultation with the European Systemic Risk Board (ESRB), identify and notify to the Commission the classes of derivatives contracts that should be included in its public register, but for which no CCP has yet received authorisation.

5. ESMA shall, on its own initiative, following public consultation, and in consultation with the EBA, European Systemic Risk Board (ESRB), and the relevant competent authorities identify and notify to the Commission the classes of derivatives contracts that should be eligible for the obligation to clear and included in its public register, but for which no CCP has yet received authorisation.

Or. en
Justification

As many of the clearing criteria relate to banking, the EBA will need to be involved at all stages, as will relevant supervisors and central banks. Public consultation is needed to establish possible reasons why no CCP has requested or received authorisation, and any resultant risks, that may not have been appreciated.

Amendment 20
Proposal for a regulation
Article 5

Text proposed by the Commission
A CCP that has been authorised to clear eligible OTC derivative contracts shall accept clearing such contracts on a non-discriminatory basis, regardless of the venue of execution.

Amendment
1. A CCP that has been authorised to clear eligible OTC derivative contracts shall accept clearing such contracts on a non-discriminatory, transparent, and objective basis, with regard to both pricing and technology, regardless of the venue of execution, inasmuch as this does not compromise risk mitigation.

Justification

There are many ways in which technology provision, discounts, and exclusivity agreements can be abused. ESMA should monitor this to see whether further rules need to be established both for CCP access and benchmarking.

Amendment 21
Proposal for a regulation
Article 5 – paragraph 1 a (new)

Text proposed by the Commission
1a. The CCP shall inform the trading venue seeking authorisation to clear an OTC derivative contract within three months of processing their request. In event of a CCP refusal to clear an OTC derivative contract from a trading venue clear and full reasons shall be given to the trading venue, this shall not prevent the
trading venue from submitting a new request for clearing an OTC derivative contract after three months following the original refusal.

Amendment 22
Proposal for a regulation
Article 5 – paragraph 1 b (new)

Text proposed by the Commission

1b. A CCP shall have the right to non-discriminatory access to the data of any particular trading venue and access to any relevant settlement system that it needs for the performance of its duties, inasmuch as this does not compromise risk mitigation.

Amendment 23
Proposal for a regulation
Article 5 – paragraph 1 c (new)

Text proposed by the Commission

1c. For the purpose of the reports to the Commission and the Parliament referred to in Article 68, ESMA shall monitor access to CCPs, and the effects on competitiveness of certain practices, including the use of exclusive licensing practices.
**Justification**

There are many ways in which technology provision, discounts, and exclusivity agreements can be abused. ESMA should monitor this to see whether further rules need to be established both for CCP access and benchmarking.

**Amendment 24**

**Proposal for a regulation**

**Article 6 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. Financial counterparties shall report to a trade repository registered in accordance with Article 51 the details of any OTC derivative contract they have entered into and any modification or termination. The details shall be reported no later than the working day following the execution, clearing, or modification of the contract.

*Amendment*

1. Financial counterparties and non-financial counterparties under Article 7(2) shall report to a trade repository registered in accordance with Article 51 the details of any OTC derivative contract they have entered into and any material modification or termination of that contract. The details shall be reported no later than the working day following the execution, clearing, modification, or termination of the contract.

Or. en

**Amendment 25**

**Proposal for a regulation**

**Article 6 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Other entities may report any such modification or termination as referred to in paragraph 1, on behalf of the original counterparts, to the extent that all the details of the contract are reported without duplication.

*Amendment*

When appropriately delegated, other entities may report any such modification or termination as referred to in paragraph 1, on behalf of the original counterparts, to the extent that all the details of the contract are reported without duplication.

Or. en
Amendment 26

Proposal for a regulation
Article 6 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

All reporting shall be carried out in accordance with international industry open standards.

Or. en

Justification

For the purposes of exchanging information pertinent to the detection of systemic risk, it is crucial that common international standards are followed for the reporting of trades.

Amendment 27

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

A counterparty that reports the full details of a contract to a trade repository on behalf of another counterparty shall not be considered in breach of any restriction on disclosure of information imposed by that contract or by any legislative, regulatory or administrative provision.

A counterparty that reports the full details of a contract to a trade repository shall not be considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

Or. en

Justification

There is no reason why this provision should only apply in instances of delegation.
Amendment 28

Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 1

*Text proposed by the Commission*  
4. Powers are delegated to the Commission to determine the details and type of the reports referred to in paragraphs 1 and 2 for the different classes of derivatives.

*Amendment*

4. Powers are delegated to the Commission to determine the details and type of the reports referred to in paragraphs 1 and 2 for the different classes, *groups, or categories* of derivatives.

Or. en

Amendment 29

Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 1 a (new)

*Text proposed by the Commission*  

*Amendment*

In the exercise of this power, the Commission shall have regard to specifying the purpose and adaptation to interrogation of data.

Or. en

Amendment 30

Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 4

*Text proposed by the Commission*  
ESMA shall develop draft regulatory technical standards for submission to the Commission by 30 June 2012.

*Amendment*

ESMA, *in coordination with EBA, EIOPA, and the ESRB*, shall develop draft regulatory technical standards for submission to the Commission by 30 June 2012.

Or. en
Justification

The development of reporting standards requires input from all of the component parts of the European System of Financial Supervision. Much of the oversight and expertise rests with banking supervisors, reporting standards have a substantial effect on insurance, and the ESRB is responsible for systemic oversight.

Amendment 31

Proposal for a regulation
Article 6 – paragraph 5 – subparagraph 2

Text proposed by the Commission
ESMA shall develop draft implementing technical standards for submission to the Commission by 30 June 2012.

Amendment
ESMA, in coordination with EBA, EIOPA, and the ESRB, shall develop draft implementing technical standards for submission to the Commission by 30 June 2012.

Or. en

Justification

The development of reporting standards requires input from all of the component parts of the European System of Financial Supervision. Much of the oversight and expertise rests with banking supervisors, reporting standards have a substantial effect on insurance, and the ESRB is responsible for systemic oversight.

Amendment 32

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 1

Text proposed by the Commission
1. Where a non-financial counterparty takes positions in OTC derivative contracts that exceed the information threshold to be determined pursuant to paragraph 3(a), it shall notify the competent authority designated in accordance with Article 48 of Directive 2004/39/EC thereof, providing justification for taking those positions.

Amendment
deleted

1. Where a non-financial counterparty takes positions in OTC derivative contracts that exceed the information threshold to be determined pursuant to paragraph 3(a), it shall notify the competent authority designated in accordance with Article 48 of Directive 2004/39/EC thereof, providing justification for taking those positions.
Amendment 33

Proposal for a regulation
Article 7 – paragraph 1 – subparagraph 2

Text proposed by the Commission

That non-financial counterparty shall be subject to the reporting obligation set out in Article 6(1).

Amendment

deleted

Or. en

Amendment 34

Proposal for a regulation
Article 7 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Where a non-financial counterparty takes positions in OTC derivative contracts exceeding the clearing threshold to be determined pursuant to paragraph 3(b), it shall be subject to the clearing obligation set out in Article 3 with regard to all its eligible OTC derivative contracts.

Amendment

2. Where a non-financial counterparty takes positions in OTC derivative contracts which, at the time the position is taken, exceed the clearing threshold to be determined pursuant to paragraph 3(b), it shall be subject to the clearing obligation set out in Article 3 with regard to all its eligible OTC derivative contracts.

Or. en

Amendment 35

Proposal for a regulation
Article 7 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Powers are delegated to the Commission to adopt regulatory technical standards specifying:

Amendment

3. Powers are delegated to the Commission to adopt a regulatory technical standard
(a) the information threshold; (b) the clearing threshold.

specifying the clearing threshold.

Amendment 36

Proposal for a regulation
Article 7 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Those thresholds shall be determined taking into account the systemic relevance of the sum of net positions and exposures by counterparty per class of derivatives.

Amendment

This threshold shall be determined taking into account the systemic relevance of the sum of net positions and exposures by counterparty per class of derivatives.

Amendment 37

Proposal for a regulation
Article 7 – paragraph 3 – subparagraph 3

Text proposed by the Commission

The regulatory standards referred to in the first subparagraph shall be adopted in accordance with Articles [7 to 7d] of Regulation .../... [ESMA Regulation].

Amendment

The regulatory standard referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No.../2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority).
Amendment 38
Proposal for a regulation
Article 7 – paragraph 3 – subparagraph 4

Text proposed by the Commission
ESMA, in consultation with the European Systemic Risk Board ("ESRB") and other relevant authorities, shall submit drafts for those regulatory standards to the Commission by 30 June 2012 at the latest.

Amendment
ESMA, in consultation with the EBA, the European Systemic Risk Board ("ESRB"), and other relevant authorities, shall submit drafts for that regulatory standard to the Commission by 30 June 2012 at the latest.

Amendment 39
Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission
4. In calculating the positions referred to in paragraph 2, OTC derivative contracts entered into by a non-financial counterparty that are objectively measurable as directly linked to the commercial activity of that counterparty shall not be taken into account.

Amendment
4. In calculating the positions referred to in paragraph 2, OTC derivative contracts entered into by a non-financial counterparty that are objectively measurable as directly linked to the commercial or treasury financing activity of that counterparty shall not be taken into account.

Amendment 40
Proposal for a regulation
Article 7 – paragraph 5

Text proposed by the Commission
5. The Commission, in consultation with ESMA, ESRB and other relevant authorities, shall periodically review the thresholds established in paragraph 3 and

Amendment
5. The Commission, in consultation with ESMA, EBA, ESRB and other relevant authorities, shall periodically review the thresholds established in paragraph 3 and
amend them, where necessary. amend them, where necessary.

Amendment 41

Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) where possible, electronic means ensuring the timely confirmation of the terms of the OTC derivative contract;

Amendment

(a) where possible, electronic means ensuring the timely confirmation of the terms of the OTC derivative contract and robust processes for timely identification, resolution, and correction of any booking inaccuracies;

Amendment 42

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall lay down the rules on penalties applicable to infringements of the rules under this Title and shall take all measures necessary to ensure that they are implemented. Those penalties shall include at least administrative fines. The penalties provided for shall be effective, proportionate and dissuasive.

Amendment

1. Member States shall lay down the rules on penalties applicable to infringements of the rules under this Title by persons established in or acting through a branch in their territory, and shall take all measures necessary to ensure that they are implemented. Those penalties shall include at least administrative fines. The penalties provided for shall be effective, proportionate and dissuasive, and take account of the steps taken to ensure compliance.
Amendment 43

Proposal for a regulation
Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Where a CCP that is a legal person established in the Union and has access to adequate liquidity intends to perform its services and activities, it shall apply for authorisation to the competent authority of the Member State where it is established.

Amendment

1. Where a CCP that is a legal person established in the Union intends to perform its services and activities, it shall apply for authorisation to the competent authority of the Member State where it is established.

Or. en

Justification

As CCPs must comply with all requirements at all times in order to remain authorised, it is not appropriate to place one requirement above all others.

Amendment 44

Proposal for a regulation
Article 10 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Such liquidity could result from access to central bank liquidity or to creditworthy and reliable commercial bank liquidity, or a combination of both. Access to liquidity could result from an authorisation granted in accordance with Article 6 of Directive 2006/48/EC or other appropriate arrangements.

Amendment

deleted

Or. en

Justification

Avoiding transfer of risk to taxpayer is paramount. Using central bank liquidity is under international discussion and needs to be agreed internationally.
Amendment 45
Proposal for a regulation
Article 16 – paragraph 1– point c

*Text proposed by the Commission*
(c) where the CCP is no longer in compliance with the conditions under which authorisation was granted;

*Amendment*
(c) where the CCP is no longer in compliance with the conditions under which authorisation was granted, *and has not taken measures to implement remedial action in a timely manner*;

Or. en

Amendment 46
Proposal for a regulation
Article 18 – paragraph 3 a (new)

*Text proposed by the Commission*

3a. The Commission, with the assistance of ESMA, shall verify that the administrative penalties referred to in paragraph 3 are effectively and consistently applied.

*Amendment*

Or. en

Amendment 47
Proposal for a regulation
Article 23 – paragraph 1

*Text proposed by the Commission*
1. A CCP established in a third country may provide clearing services to entities established in the Union only where that CCP is recognised by ESMA.

*Amendment*
1. A CCP established in a third country may provide clearing services to entities established in the Union only where that CCP is recognised by the Commission, following a request from ESMA.

Or. en
Amendment 48

Proposal for a regulation
Article 23 – paragraph 2 – introductory part

Text proposed by the Commission

2. ESMA shall recognise a CCP from a third country, where the following conditions are met:

Amendment

2. ESMA shall request the recognition of a CCP from a third country, only where the following conditions are met:

Or. en

Amendment 49

Proposal for a regulation
Article 23 – paragraph 2 – point a

Text proposed by the Commission

(a) the Commission has adopted a decision in accordance with paragraph 3;

Amendment

(a) the CCP has met the criteria set out in paragraph 3;

Or. en

Amendment 50

Proposal for a regulation
Article 23 – paragraph 3

Text proposed by the Commission

3. The Commission may adopt a Decision in accordance with the procedure referred to in Article 69(2), determining that the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the requirements resulting from this Regulation and that these CCPs are subject to effective supervision and enforcement in

Amendment

3. Powers are delegated to the Commission to adopt regulatory technical standards concerning:
that third country on an ongoing basis.

(a) the criteria for establishing that the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply with legally binding requirements which are equivalent to the requirements resulting from this Regulation;

(b) the criteria for establishing that these CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis.

Amendment 51
Proposal for a regulation
Article 23 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission  
Amendment

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No .../2010 [ESMA Regulation].

Amendment 52
Proposal for a regulation
Article 23 – paragraph 3 – subparagraph 1 b (new)

Text proposed by the Commission  
Amendment

ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012 at the latest.
Amendment 53

Proposal for a regulation
Article 23 – paragraph 3 a (new)– subparagraph 1 (new)

Text proposed by the Commission

Amendment

3a. In the event that the Commission decides not to recognise a CCP it shall inform ESMA, the European Parliament and the Council, stating its reasons.

Or. en

Amendment 54

Proposal for a regulation
Article 23 – paragraph 3 a (new)– subparagraph 2 (new)

Text proposed by the Commission

Amendment

Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of ESMA, within one month of the notice referred to in the first subparagraph, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties concerned.

Or. en
Amendment 55
Proposal for a regulation
Article 25 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The Member State competent authorities in which the CCP is located shall ensure thorough and intrusive checks concerning the suitability of the senior management and members of the board and all those whose professional activities have a material impact on the risk profile of a CCP, to ensure that they are fit and proper.

Or. en

Justification

Corresponds to checks in the Capital Requirements Directive CRD 3.

Amendment 56
Proposal for a regulation
Article 26 – paragraph 2

Text proposed by the Commission

Amendment

A CCP shall clearly determine the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria and the election mechanism for risk committee members. The governance arrangements shall be publicly available and shall, at least, determine that the risk committee is chaired by an independent member of the board, reports directly to the board and holds regular meetings.

A CCP shall clearly determine the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria, and election mechanism for risk committee members who, prior to selection, shall be subject to thorough and intrusive checks by the competent authority to ensure they are fit and proper to perform their functions. The governance arrangements shall be publicly available and shall, at least, determine that the risk committee is chaired by an independent member of the board, reports directly to the board and holds regular meetings.
Amendment 57

Proposal for a regulation
Article 29 – paragraph 1 – subparagraph 2

**Text proposed by the Commission**

Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take **appropriate** measures, including removing that member from the board.

**Amendment**

Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take **effective measures, where appropriate** including removing that member from the board.

Amendment 58

Proposal for a regulation
Article 33 – paragraph 1 – point h

**Text proposed by the Commission**

(h) the service provider cooperates with the competent authority in connection with the outsourced activities;

**Amendment**

(h) **when required, and without prejudice to the responsibility of the CCP for compliance**, the service provider cooperates with the competent authority in connection with the outsourced activities;

Amendment 59

Proposal for a regulation
Article 33 – paragraph 1 – point i

**Text proposed by the Commission**

(i) the service provider protects any **sensitive and confidential information**

**Amendment**

(i) the service provider protects any **confidential information relating to the**
relating to the CCP and its clearing members and clients. CCP and its clearing members and clients, and is established in a country recognised as having appropriate data protection standards.

Justification

'Sensitive' is not an objectively definable criteria.

Amendment 60

Proposal for a regulation
Article 34 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. A CCP shall have transparent rules for the handling of complaints.</td>
<td>2. A CCP shall have <strong>accessible</strong>, transparent and <strong>fair</strong> rules for the <strong>timely</strong> handling of complaints.</td>
</tr>
</tbody>
</table>

Amendment 61

Proposal for a regulation
Article 37 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets.</td>
<td>1. A CCP shall keep records and accounts that shall enable it, at any time and without delay, to identify and segregate the assets and positions of one clearing member from the assets and positions of any other clearing member and from its own assets, <strong>including, where relevant, assets provided via title transfer</strong>.</td>
</tr>
</tbody>
</table>

Or. en
Justification

CCPs currently take cash using the title transfer arrangement under the Financial Collateral Directive, and also take securities by way of title transfer. It is important to reflect this, particularly as a requirement for cash will significantly increase costs for end users.

Amendment 62

Proposal for a regulation
Article 37 – paragraph 2

Text proposed by the Commission

2. A CCP shall require each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients. A CCP shall allow clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation.

Amendment

2. A CCP shall ensure that records are kept enabling each clearing member to distinguish and segregate in accounts with the CCP the assets and positions of that clearing member from those of its clients, including, where relevant, assets provided via title transfer. A CCP shall allow clients to have a more detailed segregation of their assets and positions. The CCP shall publicly disclose the risks and costs associated with the different levels of segregation. Clearing members shall be required to keep their clients' positions fully segregated, in separate accounts.

Amendment 63

Proposal for a regulation
Article 37 – paragraph 3

Text proposed by the Commission

3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer on request at a pre-defined trigger event, without the consent of the clearing member and within a pre-defined transfer period its assets and positions to another clearing member. That other clearing member shall only be obliged where it has previously entered

Amendment

3. Depending on the level of segregation chosen by a client, the CCP shall ensure that it is able to transfer on request of the client or at a pre-defined trigger event, without the consent of the clearing member and within a pre-defined transfer period its assets and positions to another clearing member provided that such a transfer is legally valid and does not conflict with the
into a contractual relationship for that purpose.

**CCP's risk management strategy**: That other clearing member shall only be obliged where it has previously entered into a contractual relationship for that purpose.

**Amendment 64**

**Proposal for a regulation**

**Article 39 – paragraph 1**

*Text proposed by the Commission*

1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

*Amendment*

1. A CCP shall impose, call and collect, or secure, margins to limit its credit exposures from its clearing members, and where relevant, from CCPs which have interoperable arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and where relevant with CCPs which have interoperable arrangements, at least on a daily basis.

**Amendment 65**

**Proposal for a regulation**

**Article 39 – paragraph 2**

*Text proposed by the Commission*

2. A CCP shall adopt models and parameters in setting its margin

*Amendment*

2. A CCP shall adopt models and parameters in setting its margin
requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to a joint opinion of the college referred to in Article 15.

Amendment 66
Proposal for a regulation
Article 39 – paragraph 3

Text proposed by the Commission
3. A CCP shall call and collect margins on an intraday basis, at minimum when pre-defined thresholds are breached.

Amendment
3. A CCP shall call and collect, or secure, margins on an intraday basis, at minimum when pre-defined thresholds are breached.

Amendment 67
Proposal for a regulation
Article 39 – paragraph 4

Text proposed by the Commission
4. A CCP shall segregate the margins posted by each clearing member and, where relevant, by CCPs that have interoperable arrangements and shall ensure the protection of the margins posted against the default of other clearing members, the institution where they are deposited, or of the CCP itself and from any other loss the CCP may experience.

Amendment
4. A CCP shall segregate the margins owned by each clearing member and, where relevant, by CCPs that have interoperable arrangements and shall ensure the protection of the margins posted against the default of other clearing members, the institution where they are deposited, or of the CCP itself and from any other loss the CCP may experience.
Amendment 68

Proposal for a regulation
Article 39 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

Amendment

5. Powers are delegated to the Commission to adopt regulatory technical standards specifying the appropriate percentage and time horizon, and the appropriate mechanisms for collecting and securing margin, as referred to in paragraph 1, to be considered for the different classes of financial instruments.

Or. en

Amendment 69

Proposal for a regulation
Article 39 – paragraph 5 – subparagraph 3

Text proposed by the Commission

ESMA, in consultation with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.

Amendment

ESMA, jointly with EBA, shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012.

Or. en

Amendment 70

Proposal for a regulation
Article 41 – paragraph 1

Text proposed by the Commission

1. In addition to the capital required in Article 12, a CCP shall maintain sufficient available financial resources to cover potential losses that exceed the losses to be

Amendment

1. In addition to the capital required in Article 12, a CCP shall maintain sufficient available financial resources to cover potential losses that exceed the losses to be
covered by margin requirements and the default fund. Such resources may include any other clearing fund provided by clearing members or other parties, loss sharing arrangements, insurance arrangements, the own funds of a CCP, parental guarantees or similar provisions. Such resources shall be freely available to the CCP and shall not be used to cover the operating losses.

3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and, where relevant, the CCP's own funds referred to in Article 41(1).

Justification

In order to ensure a prudent approach to risk taking, CCPs must have some of their own money at risk.

Amendment 71

Proposal for a regulation

Article 42 – paragraph 3

Text proposed by the Commission

3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and, where relevant, the CCP's own funds referred to in Article 41(1).

Amendment

3. A CCP shall use contributions to the default fund and other contributions of non-defaulting clearing members only after having exhausted the contributions of the defaulting clearing member and the CCP's own funds referred to in Article 41(1).

Justification

In order to ensure a prudent approach to risk taking, CCPs must have some of their own money at risk.
Amendment 72

Proposal for a regulation
Article 44 – paragraph 2

Text proposed by the Commission

2. Financial instruments posted as margins shall be deposited with operators of securities settlement systems that ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP shall have prompt access to the financial instruments when required.

Amendment

2. Financial instruments posted as margins shall be deposited with operators of securities settlement systems, or other highly secure arrangements with authorised financial institutions, that ensure non-discriminatory access to CCPs and the full protection of those instruments. A CCP shall have prompt access to the financial instruments when required.

Or. en

Justification

It is important for CCPs to be able to use margin for low risk liquidity and investment purposes, as they pass on the cost benefits to their users, and hence to the real economy.

Amendment 73

Proposal for a regulation
Article 44 – paragraph 5 – subparagraph 3

Text proposed by the Commission

ESMA, in consultation with EBA, shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.

Amendment

ESMA, jointly with EBA, shall submit drafts on those regulatory technical standards to the Commission by 30 June 2012.

Or. en
**Amendment 74**

Proposal for a regulation
Article 45 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall have procedures in place to be followed where a clearing member does not comply with the requirements laid down in Article 35 within the time limit and according to the procedures established by the CCP. The CCP shall outline the procedures to be followed in the event the insolvency of a clearing member is not established by the CCP.

*Amendment*

1. A CCP shall have detailed procedures in place to be followed where a clearing member does not comply with the requirements laid down in Article 35 within the time limit and according to the procedures established by the CCP. The CCP shall outline in detail the procedures to be followed in the event the insolvency of a clearing member is not established by the CCP. *These procedures shall be reviewed annually.*

Or. en

**Amendment 75**

Proposal for a regulation
Article 47 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall, where available, use central bank money to settle its transactions. Where central bank money is not accessible, steps shall be taken to strictly limit credit and liquidity risks.

*Amendment*

1. A CCP shall, where available and practical, use central bank money to settle its transactions. Where central bank money is not accessible, steps shall be taken to strictly limit cash settlement risk.

Or. en

*Justification*

*It may not be practical to always use central bank money irrespective of the size of settlement and the jurisdiction. In order to avoid transfer of risk to the taxpayer, central banks should be relied upon to mitigate liquidity risk, and credit and liquidity must be managed at all times.*
Amendment 76
Proposal for a regulation
Article 55 – paragraph 4 a (new) – subparagraph 1 (new)

Text proposed by the Commission

4a. In the event that the Commission decides not to impose a fine, it shall inform ESMA, the European Parliament and the Council, stating its reasons.

Amendment

Or. en

Amendment 77
Proposal for a regulation
Article 55 – paragraph 4 a (new) – subparagraph 2 (new)

Text proposed by the Commission

Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of ESMA, within one month of the notice referred to in the first subparagraph, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties concerned.

Amendment

Or. en
Amendment 78

Proposal for a regulation
Article 56 – paragraph 2 a (new) – subparagraph 1 (new)

Text proposed by the Commission

Amendment

2a. In the event that the Commission decides not to impose a fine, it shall inform ESMA, the European Parliament and the Council, stating its reasons.

Or. en

Amendment 79

Proposal for a regulation
Article 56 – paragraph 2 a (new) – subparagraph 2 (new)

Text proposed by the Commission

Amendment

Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of ESMA, within one month of the notice referred to in the first subparagraph, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties concerned.

Or. en

Amendment 80

Proposal for a regulation
Article 63 – paragraph 1

Text proposed by the Commission

1. A trade repository established in a third

Amendment

1. A trade repository established in a third
country may provide its services and activities to entities established in the Union for the purposes of Article 6 only where that trade repository is recognised by ESMA.

country may provide its services and activities to entities established in the Union for the purposes of Article 6 only where that trade repository is recognised by the *Commission, following a request from* ESMA.

### Amendment 81

**Proposal for a regulation**  
**Article 63 – paragraph 2 – introductory part**  

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. ESMA shall <em>recognise</em> a trade repository from a third country, where the following conditions are met:</td>
<td>2. ESMA shall <em>request the recognition of</em> a trade repository from a third country, <em>only</em> where the following conditions are met:</td>
</tr>
</tbody>
</table>

### Amendment 82

**Proposal for a regulation**  
**Article 63 – paragraph 2 – point b**  

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) the <em>Commission has adopted a Decision in accordance with</em> paragraph 3;</td>
<td>(b) the <em>trade repository has met the criteria set out in</em> paragraph 3;</td>
</tr>
</tbody>
</table>

### Amendment 83

**Proposal for a regulation**  
**Article 63 – paragraph 3**  

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. <em>The Commission may adopt a Decision</em></td>
<td>3. <em>Powers are delegated to the</em></td>
</tr>
</tbody>
</table>
in accordance with the procedure referred to in Article 69(2), determining that the legal and supervisory arrangements of a third country ensure that trade repositories authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation and that these trade repositories are subject to effective supervision and enforcement in that third country on an ongoing basis.

Commission to adopt regulatory technical standards concerning:

(a) the criteria for establishing that the legal and supervisory arrangements of a third country ensure that trade repositories authorised in that third country comply with legally binding requirements which are equivalent to the requirements set out in this Regulation;

(b) the criteria for establishing that these trade repositories are subject to effective supervision and enforcement in that third country on an ongoing basis.

Amendment 84

Proposal for a regulation
Article 63 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission  Amendment

The regulatory technical standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation(EU) No  .../2010 [ESMA Regulation].

Or. en
Amendment 85

Proposal for a regulation
Article 63 – paragraph 3 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

ESMA shall submit drafts for those regulatory technical standards to the Commission by 30 June 2012 at the latest.

Or. en

Amendment 86

Proposal for a regulation
Article 63 – paragraph 3 a (new) – subparagraph 1 (new)

Text proposed by the Commission

Amendment

3a. In the event that the Commission decides not to recognise a trade repository, it shall inform ESMA, the European Parliament and the Council, stating its reasons.

Or. en

Amendment 87

Proposal for a regulation
Article 63 – paragraph 3 a (new) – subparagraph 2 (new)

Text proposed by the Commission

Amendment

Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of ESMA, within one month of the notice referred to in the first subparagraph, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences, unless such disclosure would seriously jeopardise the
financial markets or cause disproportionate damage to the parties concerned.

Amendment 88

Proposal for a regulation
Article 64 – paragraph 1

Text proposed by the Commission
A trade repository shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent the disclosure of confidential information.

Amendment
A trade repository shall have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility and adequate internal control mechanisms, including sound administrative and accounting procedures, which prevent any disclosure of confidential information.

Amendment 89

Proposal for a regulation
Article 64 – paragraph 4

Text proposed by the Commission
The senior management and members of the board of a trade repository shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the trade repository.

Amendment
In order to ensure the sound and prudent management of the trade repository, the senior management and members of the board of a trade repository shall be subject to thorough and intrusive checks prior to ensure they are of sufficiently good repute, expertise and experience.
Justification

Corresponds to CRD3.

Amendment 90

Proposal for a regulation
Article 69 – paragraph 1

Text proposed by the Commission

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.

Amendment

deleted

Or. en

Amendment 91

Proposal for a regulation
Article 69 – paragraph 2

Text proposed by the Commission

2. Where reference is made to this paragraph, Article 5 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Amendment

deleted

Or. en

Amendment 92

Proposal for a regulation
Article 69 – paragraph 3

Text proposed by the Commission

3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Amendment

deleted
Amendment 93

Proposal for a regulation
Article 70 a (new)

Text proposed by the Commission

Amendment

Article 70a

Maintenance of website by ESMA

1. ESMA shall maintain a website which provides the following information:
   (a) those contracts eligible for the clearing obligation under Article 4 of this Regulation;
   (b) penalties imposed for breaches of Articles 3 to 8 of this Regulation;
   (c) CCPs authorised to offer services or activities in the Union that are a legal person established in the Union, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;
   (d) penalties imposed for breaches of Title IV and Title IV of this Regulation;
   (e) CCPs authorised to offer services or activities in the Union established in a third country, and the services or activities which they are authorised to provide or perform, including the classes of financial instruments covered by their authorisation;
   (f) trade repositories authorised to offer services or activities in the Union;
   (g) penalties and fines imposed in accordance with Article 55 and Article 56 of this Regulation.

2. For the purposes of paragraph 1, points (b), (c) and (d) of this Article, Member
States' competent authorities shall maintain websites, which shall be linked to by the ESMA website;

3. All websites referred to in this Article shall be publicly accessible and regularly updated, and provide information in a clear format.