



2017/0136(COD)

31.1.2018

*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs

(COM(2017)0331 – C8-0191/2017 – 2017/0136 (COD))

Committee on Economic and Monetary Affairs

Rapporteur: Danuta Maria Hübner

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (COM(2017)0331 – C8-0191/2017 – 2017/0136 (COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0331),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0191/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) The Treaties have established an economic and monetary union whose currency is the euro, and the European Central Bank (ECB) as an Institution of the Union for this purpose. The Treaties also provide that the ESCB shall be governed by the decision-making bodies of the ECB, and the ECB alone may authorise the issue of the euro. The specific role of the ECB within the ESCB as the central bank of issue of the single currency of the Union should thus be acknowledged.

Amendment

(8) The Treaties have established an economic and monetary union whose currency is the euro, and the European Central Bank (ECB) as an Institution of the Union for this purpose. The Treaties also provide that the ESCB shall be governed by the decision-making bodies of the ECB, and the ECB alone may authorise the issue of the euro. The specific role of the ECB within the ESCB as the central bank of issue of the single currency of the Union should thus be acknowledged. ***Within the Eurosystem, for practical purposes the tasks of the central bank of issue of the euro are fulfilled by the ECB in the case of CCPs established in third countries and by the national central bank of the Member State in which an CCP is established in the case of CCPs that are established in the Union.***

Or. en

Amendment 2

Proposal for a regulation Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Any enhanced powers to be entrusted to ESMA to enable it to meet its objectives would also require both appropriate governance and sufficient funding. Enhanced powers alone would not be sufficient to achieve the ESMA's objectives where they do not have sufficient funding or where they are not governed in an effective and efficient

manner.

Or. en

Amendment 3

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) A specific *Executive Session* ("CCP *Executive Session*") should be created within *the Board of Supervisors of ESMA* to handle tasks related to CCPs in general, and supervise Union and third-country CCPs in particular. In order to *guarantee a smooth establishment of the CCP Executive Session, it is necessary to clarify its interactions with the Board of Supervisors of ESMA, its organisation and the tasks it should perform.*

Amendment

(10) A specific *ESMA internal committee* ("CCP *Supervisory Committee*") should be created within ESMA *for the purposes of preparing decisions and carrying out the tasks relating to the supervision of CCPs*, handling tasks related to CCPs in general, and supervising Union and third-country CCPs in particular. *The CCP Supervisory Committee should be composed of authorities experienced in the supervision of CCPs.* In order to *ensure the smooth integration of the CCP Supervisory Committee within the structure of ESMA, while taking due account of the specific needs of CCP supervision, as well as to preserve a swift decision-making process, the CCP Supervisory Committee should be chaired by an independent chairperson and its decisions should be subject to the non-objection of the Board of Supervisors of ESMA.*

Or. en

Amendment 4

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) In order to ensure a coherent supervisory approach and to reflect the

Amendment

(11) In order to ensure a coherent supervisory approach and to reflect the

mandates relevant authorities involved in the supervision of CCPs, the CCP *Executive Session* should be composed of permanent and CCP-specific members. *Permanent members should include the Head of the CCP Executive Session and two independent Directors, who* should act independently and objectively in the interest of the Union as a whole. *The Commission and the ECB should also appoint permanent members.* Members specific to each CCP should include a representative of the competent national authorities of the Member States where the CCP is established, designated in accordance with Regulation (EU) No 648/2012, and a representative of the relevant central bank(s) of issue. The *Head of the CCP Executive Session* should be able to invite members of the supervisory college, as well as representatives of authorities of third-country CCPs recognised by ESMA as observers to ensure that the views of the other relevant authorities are taken into account by the CCP *Executive Session*. While the permanent members should participate in all meetings of the CCP *Executive Session*, CCP specific members and observers should participate only where necessary and appropriate for CCPs under their supervision. The presence of independent *permanent members* and CCP-specific members should ensure that decisions made in the CCP *Executive Session* are consistent, appropriate and proportionate across the Union and that the relevant national competent authorities, central banks of issue and observers are involved in the decision-making on issues concerning a CCP established in a Member State.

mandates relevant authorities involved in the supervision of CCPs, the CCP *Supervisory Committee* should be composed of *a* permanent and *independent Chair* and CCP-specific members. *The Chair of the CCP Supervisory Committee* should act independently and objectively in the interest of the Union as a whole. Members specific to each CCP should include a representative of the competent national authorities of the Member States where the CCP is established, designated in accordance with Regulation (EU) No 648/2012, and a representative of the relevant central bank(s) of issue. The *Chair of the CCP Supervisory Committee* should be able to invite members of the supervisory college, as well as representatives of authorities of third-country CCPs recognised by ESMA as observers to ensure that the views of the other relevant authorities are taken into account by the CCP *Supervisory Committee*. While the permanent members should participate in all meetings of the CCP *Supervisory Committee*, CCP specific members and observers should participate only where necessary and appropriate for CCPs under their supervision. The presence of *an independent Chair* and CCP-specific members should ensure that decisions made in the CCP *Supervisory Committee* are consistent, appropriate and proportionate across the Union and that the relevant national competent authorities, central banks of issue and observers are involved in the decision-making on issues concerning a CCP established in a Member State.

Or. en

Amendment 5

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) When deciding on issues concerning a CCP established within a Member State, the CCP Executive Session should convene and ensure that its permanent members and the relevant member(s) representing the competent national authorities designated by the Member State in accordance with Regulation (EU) No 648/2012 are involved in the decision-making process as well as observers appointed by the relevant central banks of issue. When deciding on a third-country CCP, only the permanent members, the relevant central bank(s) of issue and any relevant observers of the CCP Executive Session should participate in the decision-making process.

deleted

Or. en

Amendment 6

Proposal for a regulation Recital 13

Text proposed by the Commission

Amendment

(13) In order to ensure an appropriate, effective and swift decision-making process, the Head, the two Directors of the CCP Executive Session, and the representative of the competent authority of the Member State where the CCP is established should have voting rights. The representatives of the ECB, of the Commission and of the relevant central bank(s), as well as observers, should have no voting rights. The CCP Executive Session should take its decisions by a

deleted

simple majority of its members, and the Head should have a casting vote in case of a tie.

Or. en

Amendment 7

Proposal for a regulation Recital 14

Text proposed by the Commission

Amendment

(14) The CCP Executive Session should be responsible for specific tasks assigned to it pursuant to Regulation (EU) No 648/2012 to ensure the proper functioning of the internal market as well as the financial stability of the Union and its Member States.

deleted

Or. en

Amendment 8

Proposal for a regulation Recital 15

Text proposed by the Commission

Amendment

(15) In order to ensure effective supervision, the CCP ***Executive Session*** ***should*** have a dedicated staff ***and*** adequate resources to guarantee its autonomy, independence and adequate functioning in relation to its tasks. The budgetary impact needs to be considered in the statement made by ESMA in accordance with Regulation (EU) No 1095/2010.

(15) In order to ensure effective supervision, ***it is necessary for*** the CCP ***Supervisory Committee to*** have a dedicated staff ***possessing sufficient knowledge, skills and experience as well as*** adequate resources to guarantee its autonomy, independence and adequate functioning in relation to its tasks. The budgetary impact ***of the supervisory powers over CCPs*** needs to be considered in the statement made by ESMA in accordance with Regulation (EU) No 1095/2010.

Or. en

Amendment 9

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) To provide for an appropriate level of expertise and accountability, the **Head and the two Directors** of the CCP **Executive Session** should be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to the supervision and regulation of CCPs. **They** should be chosen on the basis of an open selection procedure. The Commission should submit a proposal for the appointment of candidates to the European Parliament for approval. Following the European Parliament's approval of that proposal, the Council should adopt an implementing decision.

Amendment

(16) To provide for an appropriate level of expertise and accountability, the **Chair** of the CCP **Supervisory Committee** should be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, as well as experience relevant to the supervision and regulation of CCPs. **The Chair of the CCP Supervisory Committee** should be chosen on the basis of an open selection procedure. The Commission should submit a proposal for the appointment of candidates to the European Parliament for approval. Following the European Parliament's approval of that proposal, the Council should adopt an implementing decision.

Or. en

Amendment 10

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) ***In order to ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the Head and the two Directors of the CCP Executive Session should be accountable to the European Parliament and to the Council for any decisions taken on the basis of this Regulation.***

Amendment

deleted

Or. en

Amendment 11

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) In order to promote consistency in the supervision of Union and third-country CCPs across the Union, the **Head** of the CCP **Executive Session** should chair and manage colleges, and the permanent members of the CCP Executive Session should attend them. The ECB should, where relevant and in accordance with Council Regulation (EU) No 1024/2013, also join the colleges to be able to exercise its mandate in accordance with Article 127 of the TFEU.

Amendment

(19) In order to promote consistency in the supervision of Union and third-country CCPs across the Union, the **Chair** of the CCP **Supervisory Committee** should **attend**, chair and manage colleges, and the permanent members of the CCP Executive Session should attend them. The ECB should, where relevant and in accordance with Council Regulation (EU) No 1024/2013, also join the colleges to be able to exercise its mandate in accordance with Article 127 of the TFEU.

Or. en

Amendment 12

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) In order to ensure an appropriate and effective decision-making process, the permanent members of the CCP Executive Session should have one vote each in the colleges, with the exception of the representative of the Commission, who should be non-voting. The current members of the colleges should continue to exercise their current voting rights.

Amendment

deleted

Or. en

Amendment 13

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) While national competent authorities continue to exercise their current supervisory responsibilities under Regulation (EU) No 648/2012, the prior consent of ESMA should be required for certain decisions in order to promote consistency in the supervision of CCPs throughout the Union. A specific mechanism is introduced for cases of disagreement between ESMA and the national competent authorities. Similarly, there is a need to better reflect the mandates of the central banks of issue concerning their monetary policy responsibilities, due to the potential risks that the malfunctioning of a CCP could pose to the implementation of the monetary policy of the Union and the promotion of the smooth operation of payment systems. Therefore, the prior consent of the relevant central banks of issue should be required on certain decisions envisaged by national competent authorities, in particular when it relates to a CCP's payment and settlement arrangements and related liquidity risk management procedures for the transactions denominated in that central bank of issue's currency.

Amendment

(21) While national competent authorities continue to exercise their current supervisory responsibilities under Regulation (EU) No 648/2012, the prior consent of ESMA should be required for certain decisions in order to promote consistency in the supervision of CCPs throughout the Union. A specific mechanism is introduced for cases of disagreement between ESMA and the national competent authorities. Similarly, there is a need to better reflect the mandates of the central banks of issue concerning their monetary policy responsibilities, due to the potential risks that the malfunctioning of a CCP could pose to the implementation of the monetary policy of the Union and the promotion of the smooth operation of payment systems. Therefore, the prior consent of the relevant central banks of issue should be required on certain decisions envisaged by national competent authorities, in particular when it relates to a CCP's payment and settlement arrangements and related liquidity risk management procedures for the transactions denominated in that central bank of issue's currency. ***Since some decisions will require both the consent of ESMA and of the central bank of issue, disagreements and deadlocks between those two entities should be avoided to the greatest extent possible. Therefore, ESMA and the central bank of issue should coordinate their analysis of the draft decisions proposed by national competent authorities and endeavour to reach a common position. They should avoid proposing mutually inconsistent or incompatible amendments to draft decisions. Where inconsistencies or disagreements nevertheless arise, ESMA***

and the central bank of issue should attempt to reconcile their views and reach a compromise position within the shortest possible timeframe.

Or. en

Amendment 14

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) In order to ensure the proper involvement of the central bank(s) of issue, the systemically important third-country CCP should also *fulfil any additional* requirements that the central bank(s) of issue consider necessary. The central bank(s) of issue should provide ESMA with confirmation whether or not the CCP complies with *any* additional requirements as quickly as possible and in any case *180 days from* the CCP's application *to ESMA*.

Amendment

(32) In order to ensure the proper involvement of the central bank(s) of issue, the systemically important third-country CCP should also *fulfil the relevant* requirements that the central bank(s) of issue consider necessary. *Such requirements could include requirements relating to stress testing, reporting requirements, liquidity or collateral requirements, the right for the central bank of issue to participate in on-site inspections and the requirement for the CCP to open a cash account at a central bank.* The central bank(s) of issue should provide ESMA with confirmation whether or not the CCP complies with *those* additional requirements as quickly as possible and in any case *in due time before the deadline for ESMA to reply to* the CCP's application.

Or. en

Amendment 15

Proposal for a regulation Recital 33

Text proposed by the Commission

(33) The degree of risk posed by a

Amendment

(33) The degree of risk posed by a

systemically-important CCP to the financial system and stability of the Union varies. The requirements for systemically-important CCPs should therefore be applied in a manner proportionate to the risks that the CCP may present to the Union. Where ESMA and the relevant central bank(s) of issue conclude that a third-country CCP is of such systemic importance that additional requirements will not ensure the financial stability of the Union, ESMA should be able to recommend to the Commission that that CCP should not be recognised. The Commission should be able to adopt an implementing act declaring that the third-country CCP should be established in the Union **and authorised as such to provide clearing services in the Union.**

systemically-important CCP to the financial system and stability of the Union varies. The requirements for systemically-important CCPs should therefore be applied in a manner proportionate to the risks that the CCP may present to the Union. Where ESMA and the relevant central bank(s) of issue conclude that a third-country CCP is of such systemic importance that additional requirements will not ensure the financial stability of the Union, ESMA should be able to recommend to the Commission that that CCP should not be recognised. **On the basis of that recommendation,** the Commission should be able to adopt an implementing act declaring that the third-country CCP, **or a clearing service thereof,** should be established in the Union.

Or. en

Amendment 16

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) ESMA should regularly review the recognition of third-country CCPs as well as their classification as Tier 1 or Tier 2 CCPs. In this regard, ESMA should consider **amongst** others, the changes in the nature, size and complexity of the third-country CCP's business. Such reviews should take place at least every two years and more frequently where necessary.

Amendment

(34) ESMA should regularly review the recognition of third-country CCPs as well as their classification as Tier 1 or Tier 2 CCPs. In this regard, ESMA should consider **among** others, the changes in the nature, size and complexity of the third-country CCP's business. Such reviews should take place at least every two years and more frequently where necessary. **Further to such reviews, ESMA should be able to re-classify a CCP from Tier 1 to Tier 2 or vice versa.**

Or. en

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 2

Regulation (EU) No 1095/2010

Article 6 – point 1a

Text proposed by the Commission

Amendment

2. *In Article 6, the following point (1a) is inserted:* *deleted*

‘(1a) a Board of Supervisors in Executive Session for CCPs (CCP Executive Session), which shall exercise the tasks set out in Article 44b; ’

Or. en

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 4

Regulation (EU) No 1095/2010

Article 40 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) *the permanent members of the CCP Executive Session, referred to in point (i) of Article 44a(1)(a), who shall be non-voting.* *deleted*

Or. en

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 1095/2010

Article 42 – subparagraph 1

Text proposed by the Commission

Amendment

5. *In Article 42, the first subparagraph is replaced by the* *deleted*

following:

‘When carrying out the tasks conferred upon it by this Regulation, the Chairperson, the voting permanent members and the voting members specific to each CCP of the CCP Executive Session referred to in point (i) of Article 44a(1)(a) and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body. ’

Or. en

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point a

Regulation (EU) No 1095/2010

Article 43 –paragraph 1

Text proposed by the Commission

Amendment

(a) paragraph 1 is replaced by the following:

deleted

‘1. The Board of Supervisors shall give guidance to the work of the Authority. It shall be responsible for the tasks referred to in Chapter II, except for those tasks for which the CCP Executive Session is responsible pursuant to Article 44b(1). ’

Or. en

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point b

Regulation (EU) No 1095/2010
Article 43 – paragraph 8

Text proposed by the Commission

Amendment

(b) paragraph 8 is replaced by the following: *deleted*

‘8. The Board of Supervisors shall exercise disciplinary authority over the Chairperson and may remove him or her from office in accordance with Article 48(5). The Board of Supervisors, in agreement with the CCP Executive Session, shall exercise disciplinary authority over the Executive Director and may remove him or her from office in accordance with Article 51(5). ’

Or. en

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EU) No 1095/2010

Chapter III – section 1A

Text proposed by the Commission

Amendment

[...] *deleted*

Or. en

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 1095/2010

Article 48a

Text proposed by the Commission

Amendment

[...] *deleted*

Or. en

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EU) No 1095/2010

Article 49

Text proposed by the Commission

Amendment

10. Article 49 is replaced by the following: *deleted*

‘Without prejudice to the role of the Board of Supervisors, in relation to the tasks of the Head of the CCP Executive Session and the Directors referred to in point (i) of Article 44a(1)(a) and Chairperson, shall neither seek or take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Head of the CCP Executive Session and the Directors referred to in point (i) of Article 44a(1)(a) or the Chairperson in the performance of his or her tasks.

In accordance with the Staff Regulations referred to in Article 68, the Chairperson, the Head of the CCP Executive Session and the Directors referred to in point (i) of 44a(1)(a) shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. ’

Or. en

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 1095/2010

Article 50

Text proposed by the Commission

Amendment

11. *Article 50 is replaced by the following:* **deleted**

‘1. *The European Parliament or the Council may invite the Chairperson or his alternate, or the Head of the CCP Executive Session, to make a statement while fully respecting their independence. The Chairperson or the Head shall make a statement before the European Parliament and answer any questions put by its members, whenever so requested.*

2. *The Chairperson or the Head of the CCP Executive Session shall report in writing on the main activities of Board of Supervisors and of the CCP Executive Session, respectively, to the European Parliament where requested and at least 15 days before making the statement referred to in paragraph 1.*

3. *In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the Chairperson shall report any relevant information requested by the European Parliament on an ad-hoc basis.*

In addition to the information referred to in Article 33, the Head of the CCP Executive Session shall report any relevant information requested by the European Parliament on an ad-hoc basis.’

Or. en

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EU) No 1095/2010

Article 53 – paragraphs 2, 4 and 7

Text proposed by the Commission

Amendment

12. Article 53 is amended as follows: *deleted*

(a) Paragraph 2 is replaced by the following:

‘2. The Executive Director shall be responsible for implementing the annual work programme of the Authority under the guidance of the Board of Supervisors and the CCP Executive Session and under the control of the Management Board. ’

(b) Paragraph 4 is replaced by the following:

‘4. The Executive Director shall prepare a multi-annual work programme, as referred to in Article 47(2). For the tasks and powers referred to in Article 44b(1), the Executive Director shall obtain the consent of the CCP Executive Session prior to submitting it to the Management Board. ’

(c) Paragraph 7 is replaced by the following:

‘7. Each year the Executive Director shall prepare a draft report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.

For the tasks and powers referred to in Article 44b(1), the Executive Director shall obtain the consent of the CCP Executive Session prior to submitting it to the Management Board. ’

Or. en

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EU) No 1095/2010

Article 63 – paragraph 1a

Text proposed by the Commission

Amendment

13. In Article 63, the following paragraph 1a is inserted: *deleted*

‘1a. ESMA’s expenditure and fees relating to the tasks and powers referred to in Article 44b (1) shall be separately identifiable within the statement of estimates referred to in paragraph 1. Prior to the adoption of that statement of estimates, the draft prepared by the Executive Director relating to such expenditure and fees shall be approved by the CCP Executive Session.

The annual accounts of ESMA drawn up and published in accordance with Article 64(6) shall include the income and expenses related to the tasks referred to in Article 44b(1). ’

Or. en

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 14

Regulation (EU) No 1095/2010

Article 70 – paragraph 1

Text proposed by the Commission

Amendment

14. In Article 70, paragraph 1 is replaced by the following: *deleted*

‘1. Members of the Board of Supervisors, the CCP Executive Session and the Management Board, the Executive Director, and members of the staff of the Authority, including officials seconded by Member States on a

temporary basis and all other persons carrying out tasks for the Authority on a contractual basis, shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased. ’

Or. en

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 1095/2010

Article 76 – paragraph 2a

Text proposed by the Commission

Amendment

15. In Article 76, the following paragraph 2a is inserted:

deleted

‘2a. Until such time as the Head of the CCP Executive Session and the Directors of the CCP Executive Session referred to in Article 44a(1) take up their duties following their appointment in accordance with Article 48a, the functions of the CCP Executive Session shall be carried out by the Board of Supervisors. ’

Or. en

Amendment 30

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point a

Regulation (EU) No 648/2012

Article 18 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The **Head** of the CCP **Executive Session** referred to in Article **48a of Regulation (EU) No 1095/2010** shall chair and

The **Chair** of the CCP **Supervisory Committee** referred to in Article **22b** shall chair and manage the college.

manage the college.

Or. en

Amendment 31

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point c

Regulation (EU) No 648/2012

Article 18 – paragraph 2 – point c

Text proposed by the Commission

(c) the competent authorities responsible for the supervision of the clearing members of the CCP which are 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, including, where relevant, the ECB in *accordance with* Council Regulation (EU) No 1024/2013.⁵⁴

⁵⁴ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63."

Amendment

(c) the competent authorities responsible for the supervision of the clearing members of the CCP which are 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, including, where relevant, the ECB in *carrying out its tasks within a single supervisory mechanism under* Council Regulation (EU) No 1024/2013.

⁵⁴ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63."

Or. en

Amendment 32

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point c a (new)

Regulation (EU) No 648/2012

Article 18 – paragraph 6

Text proposed by the Commission

Amendment

(ca) *paragraph 6 is replaced by the*

following:

6. In order to ensure the consistent and coherent functioning of colleges across the Union, ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the conditions under which the Union currencies referred to in point (h) of paragraph 2 are to be considered as the most relevant and the details of the practical arrangements referred to in paragraph 5.

ESMA shall submit those draft regulatory technical standards to the Commission by [one year after the date of entry into force of this amending Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Justification

The ECB in its opinion, saw a potential need to update the existing technical standard on the issue. If this is so, central banks, as the main entities concerned by the issue, shall be involved in the drafting.

Amendment 33

Proposal for a regulation

Article 2 – paragraph 1 – point 6 – point b

Regulation (EU) No 648/2012

Article 21 – paragraph 3 –subparagraph 2

Text proposed by the Commission

The CCPs shall be subject to on-site inspections. ESMA staff shall **be invited to** participate in these on-site inspections.

Amendment

CCPs shall be subject to on-site inspections. ESMA staff shall participate in these on-site inspections.

Or. en

Amendment 34

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21a – paragraph 1 – point a

Text proposed by the Commission

(a) decisions adopted pursuant to Articles 7, 8, **14, 15, 16**, 20, 21, 30, 31, 35, 49 and 54 of this Regulation and Articles 35 and 36 of Regulation (EU) No 600/2014;

Amendment

(a) decisions adopted pursuant to Articles **7(4)**, 20, 21, 30, 31, 35, 49 and 54 of this Regulation and Articles **35(4)** and **36(4)** of Regulation (EU) No 600/2014;

Or. en

Justification

The references deleted correspond to articles that are addressed to CCPs and not to national authorities and do not involve decisions. They should therefore be moved to point (b).

Amendment 35

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 1095/2010

Article 21a – paragraph 1 – point b

Text proposed by the Commission

(b) any decisions adopted in the carrying out of their duties resulting from the requirements set out in Article 16 and Titles IV and V.

Amendment

(b) any decisions adopted in the carrying out of their duties resulting from the requirements set out in Article **7(1) to (3), Articles 8, 14, 15, and 16** and Titles IV and V **of this Regulation as well as Articles 35(1) to (3) and (5) and 36(1) to (3) and (5) of Regulation (EU) No 600/2014.**

Or. en

Amendment 36

Proposal for a regulation

Article 2 – paragraph 1 – point 7

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Text proposed by the Commission

Competent authorities shall prepare and submit draft decisions to the central banks of issue referred to in Article 18(2)(h) before adopting any decision pursuant to Articles **14, 15, 20**, 44, 46, 50 and 54.

Amendment

Competent authorities shall prepare and submit draft decisions to the central banks of issue referred to in Article 18(2)(h) before adopting any decision pursuant to Articles 44, 46, 50 and 54.

Or. en

Justification

Decisions under Article 14, 15 and 20 relate only to the authorisation or withdrawal of authorisation of a CCP, which do not seem to relate to core monetary policy concerns and for which already exists a college procedure that involves the central bank of issue.

Amendment 37

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21a – paragraph 4

Text proposed by the Commission

4. For the purposes of paragraph 1, the consent of ESMA shall be deemed to be given unless it proposes amendments or objects to the draft decision within a maximum period of 15 **calendar** days after having been notified of that decision. Where ESMA proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing.

Amendment

4. For the purposes of paragraph 1, the consent of ESMA shall be deemed to be given unless it proposes amendments or objects to the draft decision within a maximum period of 15 **working** days after having been notified of that decision. Where ESMA proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing.

Or. en

Justification

Slightly longer timeframe taking into account statutory holidays.

Amendment 38

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21b – paragraph 1 – subparagraph 1

Text proposed by the Commission

The consent referred to in Article 21a(2) shall be deemed to be given unless the central bank of issue proposes amendments or objects to the draft decision within a maximum period of 15 *calendar* days after its submission. Where the central bank of issue proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing.

Amendment

The consent referred to in Article 21a(2) shall be deemed to be given unless the central bank of issue proposes amendments or objects to the draft decision within a maximum period of 15 *working* days after its submission. Where the central bank of issue proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing.

Or. en

Justification

Alignment with the amendment made to Article 21a as regards ESMA.

Amendment 39

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21b – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where the central bank of issue proposes amendments, the competent authority may only adopt the decision as amended by that central bank of issue. Where the central bank of issue objects to a draft decision, the competent authority shall not adopt that decision.

Or. en

Justification

More logical running of the text.

Amendment 40

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21b – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where ESMA has proposed amendments pursuant to Article 21a(4) to the draft decisions to be adopted pursuant to Articles 14, 15, 20 and 54, it shall also submit them also to the central bank of issue. In that case, the deadline referred to in the first subparagraph shall be extended by 5 days.

Amendment

Where ESMA has proposed amendments pursuant to Article 21a(4) to the draft decisions to be adopted pursuant to Articles 14, 15, 20 and 54, it shall also submit them also to the central bank of issue. In that case, the deadline referred to in the first subparagraph shall be extended by 5 **working** days.

Or. en

Justification

Shall be a new paragraph 3. Provision on the timeframe specified with the addition that it refers to working days.

Amendment 41

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21b – paragraph 2

Text proposed by the Commission

2. Where the central bank of issue proposes amendments, the competent authority may only adopt the decision as amended by that central bank of issue.

Where the central bank of issue objects to a draft decision, the competent authority shall not adopt that decision.

Amendment

deleted

Or. en

Justification

Moved above in the text.

Amendment 42

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 1

Text proposed by the Commission

1. CCPs shall pay the following fees:

Amendment

1. CCPs ***authorised or recognised under this Regulation*** shall pay the following fees:

Or. en

Amendment 43

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 1 – point a

Text proposed by the Commission

(a) fees associated with applications for authorisation referred to in Article 17;

Amendment

(a) fees associated with applications for authorisation referred to in Article 17 ***or with applications for recognition pursuant to Article 25, and***

Or. en

Justification

Specifies that a CCP shall pay either of the initial fees (for authorisation or recognition) plus the annual fees.

Amendment 44

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012
Article 21c – paragraph 1 –point b

Text proposed by the Commission

Amendment

(b) fees associated with applications for recognition pursuant to Article 25; *deleted*

Or. en

Justification

Merged with point a).

Amendment 45

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The fees referred to in paragraph 1 shall 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, as applicable, and to the performance of its tasks in accordance with this Regulation.

Or. en

Justification

Standard language framing the collection of fees (see SFTR or ESAs review). Shall be a new subparagraph.

Amendment 46

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – introductory part

Text proposed by the Commission

2. The Commission shall adopt a delegated act in accordance with Article 82 to further specify the ***types of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid by the*** following entities:

Amendment

2. The Commission shall adopt a delegated act in accordance with Article 82 ***in order*** to further specify the following:

Or. en

Justification

Clearer way of presenting the list.

Amendment 47

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – point -a (new)

Text proposed by the Commission

Amendment

(-a) the types of fees;

Or. en

Amendment 48

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – point -a a (new)

Text proposed by the Commission

Amendment

(-aa) the matters for which fees are due;

Or. en

Amendment 49

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – point -a b (new)

Text proposed by the Commission

Amendment

(-ab) the amount of the fees;

Or. en

Amendment 50

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – point -a c (new)

Text proposed by the Commission

Amendment

(-ac) the manner in which fees are to be paid by the following entities:

i) CCPs established in the Union which are authorised or applying for authorisation;

ii) CCPs established in a third country which are recognised in accordance with Article 25(2);

iii) CCPs established in a third country which are recognised in accordance with Article 25(2b).

Or. en

Amendment 51

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – point -a d (new)

Text proposed by the Commission

Amendment

(-ad) arrangements ensuring the recoupment by the Union of the costs incurred by ESMA in the period between the entry into force of this amending Regulation and the entry into force of the delegated act.

Or. en

Justification

This addition is necessary as transitional provisions will be needed in the delegated act, the same way they currently exist in the delegated act regulating the fees under EMIR.

Amendment 52

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) CCPs established in the Union which are authorised or applying for authorisation;

deleted

Or. en

Justification

Moved to a new point in the global list

Amendment 53

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) CCP established in a third country which are recognised in accordance with Article 25(2);

deleted

Or. en

Amendment 54

Proposal for a regulation

Article 2 – paragraph 1 – point 7

Regulation (EU) No 648/2012

Article 21c – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) CCP established in a third country which are recognised in accordance with Article 25(2b).

deleted

Or. en

Amendment 55

Proposal for a regulation

Article 2 – paragraph 1 – point 7 a (new)

Regulation (EU) No 648/2012

Article 22 a (new)

Text proposed by the Commission

Amendment

(7a) the following Article 22a is inserted:

Article 22a

ESMA CCP Supervisory Committee

1. ESMA shall establish a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1095/2010 for the purposes of preparing decisions and carrying out the tasks relating to the supervision of Union and third country CCPs.

The CCP Supervisory Committee established pursuant to the first subparagraph shall submit to the Board of Supervisors complete draft decisions for adoption in accordance with Article 22c.

2. The CCP Supervisory Committee shall be composed of:

(a) the following permanent members:

(i) a Chair, appointed in accordance with Article 22b, who shall be voting;

(ii) a representative of the Commission, who shall be non-voting; and

(iii) a representative of the ECB, who shall be non-voting;

(b) the following non-permanent members specific to each CCP in relation to which the CCP Supervisory Committee is convened:

(i) a representative of the competent authority for each CCP established in the Union in relation to which the CCP is convened, who shall be voting; and

(ii) a representative of each of the relevant central banks of issue referred to in point (h) of Article 18(2) of Regulation (EU) No 648/2012 for each CCP established in the Union in relation to which the CCP Supervisory Committee is convened, who shall be non-voting.

The Chair may invite as observers to the meetings of the CCP Supervisory Committee, where and as appropriate and necessary, other members referred to in Article 18(2) of Regulation (EU) No 648/2012 of the college of the relevant CCP to the meetings of the CCP Supervisory Committee.

Where the CCP Supervisory Committee is exercising any of the tasks referred to in point (b) of paragraph 3, authorities of third country CCPs recognised by ESMA pursuant to Article 25 of Regulation (EU) No 648/2012 may be invited, where and as

appropriate and necessary, as observers.

Where discussing decisions pertaining to Article 25(2a) and (2c), Article 25b and Articles 41, 44 and 46, central banks of issue of the financial instruments cleared or to be cleared by the third country CCP in relation to which the CCP Supervisory Committee convenes may be invited to participate in the CCP Supervisory Committee as observers.

Meetings of the CCP Supervisory Committee shall be convened by its Chair at its own initiative or at the request of any of its members.

The CCP Supervisory Committee shall meet at least five times a year.

Where a task of the CCP Supervisory Committee does not relate to a specific CCP established in the Union, the Committee shall be composed only of the permanent members referred in point (a) of this paragraph and, where relevant, the central banks of issue referred to in point (b)(ii) of this paragraph.

3. The CCP Supervisory Committee shall be responsible for all of the following:

(a) providing the consent referred to in Article 21a(1) of Regulation (EU) No 648/2012;

(b) recognising and supervising third-country CCPs in accordance with Article 25 of Regulation (EU) No 648/2012, the monitoring of regulatory and supervisory developments in third countries under Chapter 2 of Title II of Regulation (EU) No 648/2012; and

(c) the tasks referred to in the first subparagraph of Article 5(1), the first subparagraph of Article 9(3), Articles 9(4), 13(1) and (4), 17(2) and (3), 18(1), 20(2) and (6), Articles 21c, 23 and 24, Articles 29(3), 38(5), 48(3), 49(1) and 54(3) of Regulation (EU) No 648/2012.

4. The Chair of the CCP Supervisory Committee shall be a full-time,

independent professional. The Chair shall be appointed on the basis of merit, skills, knowledge of clearing, post-trading and financial matters, and of experience relevant to CCP supervision and regulation. The Chair shall be chosen on the basis of an open selection procedure organised by the Commission, which shall respect the principles of gender balance, experience and qualification.

The Chair shall not hold any other office at national, Union, or international level.

The Commission shall provide to the European Parliament a shortlist of candidates for the position of Chair of the CCP Supervisory Committee and shall inform the Council of the shortlist.

The Commission shall submit a proposal for the appointment of the Chair of the CCP Supervisory Committee to the European Parliament for approval.

Following the approval of that proposal, the Council shall adopt an implementing decision to appoint the Chair of the CCP Supervisory Committee. The Council shall act by qualified majority.

Where the Chair of the CCP Supervisory Committee no longer fulfils the conditions required for the performance of his or her duties or has been found guilty of serious misconduct, the Council may, on a proposal from the Commission which has been approved by the European Parliament, adopt an implementing decision to remove him or her from office. The Council shall act by qualified majority.

The European Parliament or the Council may inform the Commission that they consider the conditions for the removal of the Chair of the CCP Supervisory Committee to be fulfilled, to which the Commission shall respond.

5. The CCP Supervisory Committee shall be supported by a dedicated staff possessing sufficient knowledge, skills

and experience and shall be granted adequate resources by ESMA to carry out its tasks.

6. The CCP Supervisory Committee shall inform the relevant supervisory college of the complete draft decisions it submits to the Board of Supervisors pursuant to paragraph 1.

7. The CCP Supervisory Committee shall ensure that members of the college referred to in Article 18(2), the authorities referred to in Article 25(3) of Regulation (EU) No 648/2012 and the ESRB, in accordance with Article 15 of Regulation (EU) No 1092/2010, have access to all information necessary for the purpose of carrying out their tasks.

8. For the purposes of this Regulation, ESMA shall ensure structural separation between the CCP Supervisory Committee and other functions referred to in Regulation (EU) No 1095/2010.

Or. en

Amendment 56

Proposal for a regulation

Article 2 – paragraph 1 – point 7 b (new)

Regulation (EU) No 648/2012

Article 22 b (new)

Text proposed by the Commission

Amendment

(7b) the following Article 22b is inserted:

Article 22b

Decision-making within the CCP Supervisory Committee

The CCP Supervisory Committee shall take its decisions by a simple majority of its members. In the event of a tie, the Chair shall have the casting vote.

Amendment 57

Proposal for a regulation

Article 2 – paragraph 1 – point 7 c (new)

Regulation (EU) No 648/2012

Article 22 c (new)

Text proposed by the Commission

Amendment

(7c) the following Article 22c is inserted:

Article 22c

Decision-making within the Board of Supervisors

Where the CCP Supervisory Committee submits draft decisions to the Board of Supervisors, those draft decisions shall be deemed adopted by ESMA unless the Board of Supervisors decides on the basis of a qualified majority, as defined in Article 16(4) of the Treaty on European Union and in Article 238(2) TFEU, to reject the draft decision within five working days of its transmission. In cases of particular urgency, the aforementioned period shall not exceed 24 hours. Where the Board of Supervisors rejects a draft decision, it shall state the reasons for doing so in writing.

Or. en

Amendment 58

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point -a (new)

Regulation (EU) No 648/2012

Article 25 – paragraph 1

Present text

Amendment

1. A CCP established in a third country may provide clearing services to clearing members or trading venues established in the Union **only where** that CCP is recognised by ESMA.

(-a) paragraph 1 is replaced by the following:

1. A CCP established in a third country may **only** provide clearing services to clearing members or trading venues established in the Union **when** that CCP is recognised by ESMA **according to either the procedure set out in paragraph 2 or the procedure set out in paragraph 2b.**

Or. en

Justification

Clarifies that there are two tracks for recognition: as Tier 1 or Tier 2.

Amendment 59

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point a

Regulation (EU) No 648/2012

Article 25 – paragraph 2 – point e

Text proposed by the Commission

(e) the CCP has been determined as **not** systemically important or **not** likely to become systemically important (**Tier 1 CCP**) in accordance with paragraph 2a.

Amendment

(e) the CCP has **not** been determined as systemically important or likely to become systemically important in accordance with paragraph 2a **and is therefore a Tier 1 CCP.**

Or. en

Amendment 60

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2a – introductory part

Text proposed by the Commission

2a. ESMA shall determine whether a **CCP** is systemically important or likely to become systemically important for the financial stability of the Union or for one or more of its Member States (Tier 2 CCP) by taking into account all of the following criteria:

Amendment

2a. ESMA shall determine whether a **CCP** is systemically important or likely to become systemically important for the financial stability of the Union or for one or more of its Member States (Tier 2 CCP) by taking into account all of the following criteria:

Or. en

Amendment 61

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2a – point a

Text proposed by the Commission

(a) the nature, size and complexity of the CCP's business, including the value in aggregate terms and in each **Union** currency of transactions cleared by the CCP, or the aggregate exposure of the CCP engaged in clearing activities to its **counterparties**;

Amendment

(a) the nature, size and complexity of the CCP's business, including the value in aggregate terms and in each currency of transactions cleared by the CCP, or the aggregate exposure of the CCP engaged in clearing activities to its **clearing members and, to the extent that they can be readily identified, their clients and indirect clients, in particular where any of those members or clients have been designated as other systemically important institutions (O-SIIs) pursuant to Directive 2013/36/EU.**

Or. en

Justification

The systemic nature of a CCP depends on its exposures to members, clients and indirect clients.

Amendment 62

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2a – point c

Text proposed by the Commission

(c) the CCP's clearing membership structure;

Amendment

(c) the CCP's clearing membership structure *as well as the structure of its network of clients and indirect clients*;

Or. en

Justification

The systemic nature of a CCP also depends on the clients to which its members provide services, not only on the membership structure.

Amendment 63

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2a – point c a (new)

Text proposed by the Commission

Amendment

(ca) *the availability of substitutable clearing services in the currencies concerned to clearing members, their clients and indirect clients*;

Or. en

Justification

Substitutability of activities is a standard criterion to assess the systemic nature of an institution.

Amendment 64

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012
Article 25 – paragraph 2a – point d

Text proposed by the Commission

(d) the CCP's relationship, interdependencies, or other interactions with other financial market infrastructures, other financial institutions and the broader financial system.

Amendment

(d) the CCP's relationship, interdependencies, or other interactions with other financial market infrastructures, other financial institutions and the broader financial system ***to the extent that those interactions are likely to affect the financial system of the Union or of its Member States.***

Or. en

Amendment 65

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2b – introductory part

Text proposed by the Commission

2b. Where ESMA determines a CCP to be systemically important or likely to become systemically important (Tier 2 CCP) in accordance with paragraph 2a, it ***may*** only recognise that CCP where, in addition to the conditions referred to in Article 25(2)(a), (b), (c) and (d), the following conditions are fulfilled:

Amendment

2b. Where ESMA determines a CCP to be systemically important or likely to become systemically important (Tier 2 CCP) in accordance with paragraph 2a, it ***shall*** only recognise that CCP where, in addition to the conditions referred to in Article 25(2)(a), (b), (c) and (d), the following conditions are fulfilled:

Or. en

Amendment 66

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2b – point a

Text proposed by the Commission

Amendment

(a) the CCP complies, at the moment of recognition and thereafter on an ongoing basis, with the requirements set out in Article 16 and in Titles IV and V. ***ESMA shall take into account, in accordance with Article 25a(2), the extent to which an CCP's compliance with those requirements is satisfied by the CCP's compliance with the comparable requirements applicable in the third country;***

(a) the CCP complies, at the moment of recognition and thereafter on an ongoing basis, with the requirements set out in Article 16 and in Titles IV and V.

Or. en

Justification

Streamlining of the drafting: point moved to Article 25a.

Amendment 67

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2b – point b

Text proposed by the Commission

Amendment

(b) following the consultation referred to in point (f) of paragraph 3, the central banks of issue referred to therein have provided ESMA with written confirmation, within ***180 days of the submission of an application***, that the CCP complies with ***any*** requirements imposed by those central banks of issue in the carrying out of their monetary policy tasks. Where the relevant central bank of issue has not provided a written response to ESMA within the deadline, ESMA may consider ***this*** requirement to be fulfilled;

(b) following the consultation referred to in point (f) of paragraph 3, the central banks of issue referred to therein have provided ESMA with written confirmation, within ***the deadline to respond to the consultation referred to in point (f) of paragraph 3***, that the CCP complies with ***relevant*** requirements imposed by those central banks of issue in the carrying out of their monetary policy tasks. ***Such requirements may relate to stress testing, reporting, liquidity or collateral, the right of the central bank of issue to participate in on-site inspections, and the opening by the CCP of a cash account at a central bank.*** Where the relevant central bank of issue has not provided a written response to

ESMA within the deadline, ESMA may consider **the** requirements **under this point** to be fulfilled;

Or. en

Justification

180 days is the deadline for ESMA to reply to the CCP under Article 25(4), so the response shall arrive before this deadline. Better framing of the additional requirements that a central bank may impose on a third country CCP.

Amendment 68

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2b– point c

Text proposed by the Commission

(c) the CCP has provided ESMA with **its unconditional** written **consent**, signed by the legal representative of the CCP, to provide within **72 hours** after service of a request by ESMA any documents, records, information and data held by such CCP at **any time, and that ESMA may** access any of the CCP's business premises, as well as a reasoned legal opinion by an independent legal expert confirming that the consent provided is valid and enforceable under the relevant applicable laws;

Amendment

(c) the CCP has provided ESMA with **a** written **undertaking**, signed by the legal representative of the CCP, to provide **unconditionally and** within **10 working days** after service of a request by ESMA any documents, records, information and data held by such CCP **at the time the request is served and to allow ESMA to** access any of the CCP's business premises, as well as a reasoned legal opinion by an independent legal expert confirming that the consent provided is valid and enforceable under the relevant applicable laws;

Or. en

Justification

72 hours seem too short a delay.

Amendment 69

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

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Regulation (EU) No 648/2012
Article 25 – paragraph 2b – point d

Text proposed by the Commission

(d) the CCP has ***put in place*** all necessary measures and procedures ***that*** ensure the effective compliance with the requirements laid down in points (a) and (c);

Amendment

(d) the CCP has ***taken*** all necessary measures and ***established all necessary*** procedures ***to*** ensure the effective compliance with the requirements laid down in points (a) and (c);

Or. en

Amendment 70

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2b a (new)

Text proposed by the Commission

Amendment

2ba. For the purposes of point (d) of Article 25(7), the cooperation arrangements to be established shall provide clear and detailed information on the elements referred to in Article 25(7). They shall also specify the modalities for cooperation between ESMA and the competent authorities of the third countries concerned in situations where the CCP is facing distress.

Or. en

Justification

Memoranda of understanding will be key for the proper cooperation between home and host authorities regarding the supervision of Tier 2 CCPs. They shall therefore be more detailed and comprehensive than the memoranda of understanding foreseen in the case of the supervision of Tier 1 CCPs, in particular as regards the key issue of crisis management.

Amendment 71

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Text proposed by the Commission

ESMA, ***in agreement with*** the relevant central banks of issue and ***commensurate with the degree of systemic importance of the CCP in accordance with paragraph 2a***, may conclude that a CCP is of such substantial systemic importance that compliance with the conditions set out in paragraph 2b does not sufficiently ensure the financial stability of the Union or of one or more of its Member States ***and should not therefore be recognised***. In such a case, ESMA shall recommend that the Commission adopt an implementing act ***confirming that that CCP should not be recognised in accordance with paragraph 2b***.

Amendment

ESMA, ***after obtaining consent of*** the relevant central banks of issue and ***after consulting the ESRB***, may conclude that a CCP is of such substantial systemic importance that compliance with the conditions set out in paragraph 2b does not sufficiently ensure the financial stability of the Union or of one or more of its Member States. In such a case, ESMA shall recommend that the Commission adopt an implementing act ***prohibiting the CCP concerned from being recognised in accordance with paragraph 2 and requiring the CCP to obtain authorisation in accordance with Article 14 in order to provide the clearing services concerned in the Union***.

ESMA may, in its analysis, identify specific clearing services or activities for which it considers that recognition shall not be granted or extended.

The recommendation shall be accompanied by an analysis of all of the following elements:

(a) the elements referred to in points (a) to (d) of Article 25;

(b) the characteristics of the clearing services provided by the CCP, in particular the liquidity needs associated with such services and the related likelihood of need for liquidity support in distressed situations, as well as the substitutability of the clearing services provided by the CCP;

(c) the potential consequences of including the outstanding cleared contracts within the scope of the implementing act;

(d) the potential consequences, in terms of costs and benefits, of the requirement for the CCP to apply for authorisation in the

Union on the Union clearing members, their clients, linked and operable FMIs and Union markets as a whole, in particular as regards the impact of the decision on the level playing field between Union clients and members and clients and members from other jurisdictions;

(e) the potential impact consequences of the requirement for the CCP to apply for authorisation in the Union for the financial stability of the Union or of one or more of its Member States;

(f) the existence and nature of liquidity support mechanisms available to the CCP in its home country and the existence of any market mechanisms allowing to spread the risk caused by the CCP.

Or. en

Justification

The analysis to be made by ESMA and the central banks should be granular and include a cost-benefit analysis, taking in particular into account the monetary policy and liquidity risks posed by the CCP and the possibility of adequately treating legacy contracts.

Amendment 72

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point b

Regulation (EU) No 648/2012

Article 25 – paragraph 2c –subparagraph 2

Text proposed by the Commission

*After submission of the recommendation referred to in the first subparagraph, the Commission may adopt **an** implementing act **declaring that that CCP shall not be recognised pursuant to paragraph 2b and that it may only provide** clearing services in the Union **after it has been granted authorisation** in accordance with Article 14.*

Amendment

Based on** the recommendation referred to in the first subparagraph, **and after duly considering the elements referred to in points (a) to (f) of the third subparagraph,** the Commission may adopt **the** implementing act **referred to in the first subparagraph.

That implementing act may do any of the following:

(a) prohibit the recognition of the CCP or the extension of its recognition to one or more clearing services and state that those clearing services shall only be provided to clearing members and trading venues established in the Union by a CCP authorised in accordance with Article 14;

(b) specify an appropriate adaptation period for the CCP, its clearing members and their clients, together with the conditions under which the CCP may be temporarily recognised during such adaptation period and any measures that shall be taken during such adaptation period in order to limit the potential costs to clearing members and their clients, in particular those established in the Union;

Or. en

Amendment 73

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point c

Regulation (EU) No 648/2012

Article 25 – paragraph 5

Text proposed by the Commission

Amendment

5. ESMA shall, after consulting the authorities and entities referred to in paragraph 3, review the recognition of the CCP established in a third country where that CCP has extended the range of its activities and services in the Union and in any case at least every two years. That review shall be conducted in accordance with paragraphs 2, 3 and 4.

deleted

Or. en

Justification

Moved below, to Article 25a.

Amendment 74

Proposal for a regulation

Article 2 – paragraph 1 – point 9 – point e

Regulation (EU) No 648/2012

Article 25 – paragraph 6a

Text proposed by the Commission

6a. The Commission **may** adopt a delegated act in accordance with Article 82 to further specify the criteria referred to in points (a), (b) and (c) of paragraph 6.

Amendment

6a. The Commission **shall** adopt a delegated act in accordance with Article 82 to further specify the criteria referred to in points (a), (b) and (c) of paragraph 6.

Or. en

Justification

The delegated act will be helpful in every case and should therefore be mandatory.

Amendment 75

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25a – paragraph 1

Text proposed by the Commission

1. **The** CCP referred to in Article 25(2b)(a) may submit a reasoned request that ESMA assesses **its** comparable compliance with the requirements referred to in Article 25(2b)(a) and set out in Article 16 and Titles IV and V.

Amendment

1. A CCP referred to in Article 25(2b)(a) may submit a reasoned request that ESMA assesses **whether it complies, under the applicable third country framework, with requirements which, in any category to be defined by the Commission in the act referred to in paragraph 3, are comparable with the requirements referred to in Article 25(2b)(a) and set out in Article 16 and Titles IV and V and whether such compliance may be deemed to satisfy** compliance with the requirements referred to in Article 25(2b)(a) and set out in Article 16 and Titles IV and V .

Where ESMA, as a result of that assessment, finds that the CCP's compliance with this Regulation is

satisfied by the CCP's compliance with the comparable requirements applicable in the third country, that finding shall be taken into account in the assessment carried out for the purposes of Article 25(2b)(a).

In carrying out its assessment under this paragraph, ESMA shall take into account the implementing act adopted in accordance with Article 25(6).

Or. en

Justification

Clarification of the comparable compliance mechanism.

Amendment 76

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25a – paragraph 3 – point b

Text proposed by the Commission

(b) the modalities and conditions to carry out the assessment.

Amendment

(b) the modalities and conditions to carry out the assessment, *including the definition of categories of obligations by which the comparable compliance shall be assessed.*

Or. en

Amendment 77

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25b – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. *Where ESMA receives a notification under the third subparagraph*

of paragraph 1 or where a Tier 2 CCP fails to provide ESMA with the confirmation referred to in the second subparagraph of paragraph 1, the CCP shall be considered as no longer meeting the conditions for recognition pursuant to Article 25(2b) and the procedures set out in Article 25m(2), (3) and (4) shall therefore be applied.

Or. en

Justification

It should be made clear that non-compliance with the conditions for recognition is a situation that triggers supervisory response and possibly withdrawal of recognition.

Amendment 78

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25b – paragraph 2

Text proposed by the Commission

Amendment

2. *ESMA shall prepare and submit draft decisions to the central bank of issue of the relevant currency referred to in Article 18(2)(h) before adopting any decision pursuant to Articles 41, 44, 46, 50, and 54.*

deleted

ESMA shall obtain, in accordance with this paragraph, the consent of the relevant central bank of issue in respect of any aspect of those decisions relating to the carrying out of their monetary policy tasks. The consent of the central bank of issue referred to in the second subparagraph shall be deemed to be given unless it proposes amendments or objects to the draft decision within 15 calendar days after having been notified of the draft decision. Where the central bank of issue proposes amendments or objects to a draft decision, it shall provide full and

detailed reasons, in writing.

Where the central bank of issue objects to a draft decision, ESMA shall not adopt that decision. Where the central bank of issue proposes amendments, ESMA may only adopt the decision as amended by that central bank of issue.

Or. en

Justification

Moved to a separate article

Amendment 79

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25b – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. ESMA shall, after consulting the authorities and entities referred to in paragraph 3 of Article 25, review the recognition of a third country CCP where that CCP has extended the range of its activities and services in the Union and, in any case, at least every two years. That review shall be conducted in accordance with paragraphs 2, 3 and 4 of Article 25.

Or. en

Justification

Moves the new text of paragraph 5 of Article 25 to a place that makes the text run more logically.

Amendment 80

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Text proposed by the Commission

Amendment

3b. Where, further to the review referred to in the paragraph 3a, ESMA determines that a Tier 1 CCP has become significant for the financial stability of the Union or for one or more of its Member States, and is therefore a Tier 2 CCP, Articles 25b to 25f shall start to apply to that CCP within one year following the completion of the review.

Where, following the review referred to in paragraph 4, ESMA assesses that a Tier 2 CCP is no longer significant for the financial stability of the Union or for one or more of its Member States, and is therefore a Tier 1 CCP, Articles 25b to 25f shall cease to apply to that CCP .

Or. en

Justification

Caters for the dynamic and ongoing element of recognition

Amendment 81

Proposal for a regulation
Article 2 – paragraph 1 – point 10
Regulation (EU) No 648/2012
Article 25b a (new)

Text proposed by the Commission

Amendment

Article 25ba

Consent of the central bank of issue

1. ESMA shall prepare and submit draft decisions to the central bank of issue of the relevant currency referred to in Article 18(2)(h) before adopting any decision pursuant to Articles 41, 44, 46, 50, and 54.

2. *ESMA shall obtain, in accordance with this paragraph, the consent of the relevant central bank of issue in respect of any aspect of those decisions relating to the carrying out of their monetary policy tasks. The consent of the central bank of issue shall be deemed to be given unless it proposes amendments or objects to the draft decision within 15 working days after having been notified of the draft decision. Where the central bank of issue proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing.*

3. *Where the central bank of issue objects to a draft decision, ESMA shall not adopt that decision. Where the central bank of issue proposes amendments, ESMA may only adopt the decision as amended by that central bank of issue.*

Or. en

Justification

Moved from paragraph 2b of Article 25 to a separate Article.

Amendment 82

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25d – paragraph 1

Text proposed by the Commission

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of Tier 2 CCPs. To that end, the officials and other persons authorised by ESMA shall be empowered to:

Amendment

1. In order to carry out its duties under this Regulation, ESMA may conduct necessary investigations of Tier 2 CCPs, *related third parties of Tier 2 CCPs and third parties to whom Tier 2 CCPs have outsourced operational functions or activities*. To that end, the officials and other persons authorised by ESMA shall be empowered to:

Or. en

Amendment 83

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25d – paragraph 1 – point c

Text proposed by the Commission

(c) summon and ask **Tier 2 CCPs** or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the **inspection** and to record the answers;

Amendment

(c) summon and ask **persons referred to in Article 25d(1)** or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the **investigation** and to record the answers;

Or. en

Amendment 84

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25d – paragraph 3

Text proposed by the Commission

3. **Tier 2 CCPs** are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 25h, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

Amendment

3. **Persons referred to in Article 25d(1)** are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 25h, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.

Or. en

Amendment 85

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25d – paragraph 4

Text proposed by the Commission

4. Prior to notifying **a Tier 2 CCP** of an investigation, ESMA shall inform the relevant third-country competent authority where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the third-country competent authority concerned may, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the third-country competent authority concerned may also attend the investigations. Investigations in accordance with this Article shall be conducted provided that the relevant third-country authority does not object to them.

Amendment

4. Prior to notifying **persons referred to in Article 25d(1)** of an investigation, ESMA shall inform the relevant third-country competent authority where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the third-country competent authority concerned may, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the third-country competent authority concerned may also attend the investigations. Investigations in accordance with this Article shall be conducted provided that the relevant third-country authority does not object to them.

Or. en

Amendment 86

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25d – paragraph 5

Text proposed by the Commission

5. ***If any of the requests referred to in paragraph 1 require authorisation from a judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.***

Amendment

deleted

Or. en

Justification

This provision penalised ESMA when carrying out investigations with respect to third country national competent authorities and with respect to the Commission in its antitrust investigations.

Amendment 87

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25e – paragraph 1

Text proposed by the Commission

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises *of Tier 2 CCPs*. The relevant central bank of issue shall be invited to participate in such on-site inspections.

Amendment

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises *or property of persons referred to in Article 25d(1)*. The relevant central bank of issue shall be invited to participate in such on-site inspections.

Or. en

Amendment 88

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25e – paragraph 4

Text proposed by the Commission

4. *Tier 2 CCPs* shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 25h, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.

Amendment

4. *Persons referred to in Article 25d(1)* shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 25h, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice.

Amendment 89

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25e – paragraph 8

Text proposed by the Commission

Amendment

8. *If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to the applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.* **deleted**

Or. en

Justification

See deletion of paragraph 5 of Article 25d

Amendment 90

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25f – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

In order to carry out his tasks, the investigation officer may exercise the power to request information in accordance with Article 25c and to conduct investigations and on-site inspections in accordance with Articles 25d and 25e.

When using those powers, the investigation officer shall comply with Article 25c(4).

In order to carry out his tasks, the investigation officer may exercise the power to request information in accordance with Article 25c and to conduct investigations and on-site inspections in accordance with Articles 25d and 25e.

Or. en

Justification

If not deleted, reference to this specific paragraph risks to be used to challenge attorney-client privilege.

Amendment 91

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25f – paragraph 4

Text proposed by the Commission

4. When submitting the file with his findings to ESMA, the investigation officer shall notify that fact to the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information *affecting third parties*.

Amendment

4. When submitting the file with his findings to ESMA, the investigation officer shall notify that fact to the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information *or ESMA's internal preparatory documents*.

Or. en

Justification

Alignment with Article 25i as it refers to the same file.

Amendment 92

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25f – paragraph 8

Text proposed by the Commission

8. ESMA shall refer matters for criminal prosecution to the appropriate authorities for investigation and possible criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the

Amendment

8. ESMA shall refer matters for criminal prosecution to the appropriate authorities for investigation and possible criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the

possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

possible existence of facts *that it knows to be* liable to constitute criminal offences *under the applicable law*. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where *it is aware that* a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of res judicata as the result of criminal proceedings under national law.

Or. en

Justification

ESMA might not know about or be able to assess all third country criminal law frameworks.

Amendment 93

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25g – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where, in accordance with Article 25f(5), ESMA finds that a CCP has, intentionally or negligently, committed one of the infringements listed in Annex III, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.

Amendment

Where, in accordance with Article 25f(5), ESMA finds that a **Tier 2** CCP has, intentionally or negligently, committed one of the infringements listed in Annex III, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.

Or. en

Justification

Clarification that this Article applies to Tier 2 CCPs

Amendment 94

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012
Article 25g – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

An infringement by a CCP shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that the CCP or its senior management acted deliberately to commit the infringement.

deleted

Or. en

Justification

This definition has limited ESMA's application of the notion of intentionality in the past.

Amendment 95

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25g – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

Where an act or omission of a CCP constitutes more than one infringement listed in Annex III, only the higher fine calculated in accordance with paragraphs 2 and 3 and relating to one of those infringements shall apply.

Where an act or omission of a ***Tier 2*** CCP constitutes more than one infringement listed in Annex III, only the higher fine calculated in accordance with paragraphs 2 and 3 and relating to one of those infringements shall apply.

Or. en

Justification

Specification that this article covers only 2 CCPs.

Amendment 96

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25h – paragraph 1 – point c – introductory part

Text proposed by the Commission

Amendment

(c) a **Tier 2 CCP**:

(c) a **person referred to in Article 25d(1)**:

Or. en

Amendment 97

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25i – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The first paragraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

Or. en

Justification

Alignment with Article 25 CRAR. Increases the effectiveness of ESMA's procedure.

Amendment 98

Proposal for a regulation

Article 2 – paragraph 1 – point 10

Regulation (EU) No 648/2012

Article 25m – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Where ESMA determines that remedial action within the set timeframe or that the action taken is not appropriate, it shall withdraw the recognition decision.

Where ESMA determines that remedial action **has not been taken** within the set timeframe or that the action taken is not appropriate, it shall withdraw the

recognition decision.

Or. en

Amendment 99

Proposal for a regulation

Article 2 – paragraph 1 – point 11 – point b

Regulation (EU) No 648/2012

Article 49 – paragraph 1b

Text proposed by the Commission

1b. Within 30 working days of the receipt of the application, the competent authority, in consultation with ESMA, shall conduct a risk assessment of the CCP and submit a report to the college established in accordance with Article 18.

Amendment

1b. Within 30 working days of the receipt of the application, the competent authority, in consultation with ESMA **and the central bank of issue**, shall conduct a risk assessment of the CCP and submit a report to the college established in accordance with Article 18.

Or. en

Justification

Central banks of issue need to be closely involved in the analysis of models so as to spot any interaction with monetary policy objectives. Involving them in the risk assessment is a good way of involving them without resorting to a cumbersome procedure.

Amendment 100

Proposal for a regulation

Article 2 – paragraph 1 – point 11 – point b

Regulation (EU) No 648/2012

Article 49 – paragraph 1e

Text proposed by the Commission

1e. The CCP **may** not adopt any significant change to the models and parameters referred to in paragraph 1 before obtaining the validation referred to in paragraph 5. The CCP's competent authority, **in agreement with** ESMA, may allow for a provisional adoption of a significant change those models or

Amendment

1e. The CCP **shall** not adopt any significant change to the models and parameters referred to in paragraph 1 before obtaining the validation referred to in paragraph **1d**. The CCP's competent authority, **after obtaining the consent of** ESMA, may allow for a provisional adoption of a significant change those

parameters prior to its validation where duly justified.

models or parameters prior to its validation where duly justified.

Or. en

Amendment 101

Proposal for a regulation

Article 2 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 89 – paragraph 3a

Text proposed by the Commission

3a. ESMA shall not exercise its powers pursuant to paragraph 2a, 2b and 2c of Article 25 until [insert date of entry into force of the delegated act referred to in the second subparagraph of paragraph 3 of that Article]

Amendment

3a. ESMA shall not exercise its powers pursuant to paragraph 2a, 2b and 2c of Article 25 until [insert date of entry into force of the delegated act referred to in the second subparagraph of paragraph **2a** of that Article]

Or. en

Amendment 102

Proposal for a regulation

Article 2 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 89 – paragraph 3b

Text proposed by the Commission

3b. ESMA shall review the recognition decisions adopted pursuant to Article 25(1) before [entry into force of this Regulation] within **12** months from the entry into force of the delegated act referred to in the second subparagraph of Article 25(2a), in accordance with Article 25(5).

Amendment

3b. ESMA shall review the recognition decisions adopted pursuant to Article 25(1) before [entry into force of this **amending** Regulation] within **18** months from the entry into force of the delegated act referred to in the second subparagraph of Article 25(2a), in accordance with Article 25(5).

Or. en

Justification

The review process will take time, and it could be appropriate to lengthen the timeframe.

Amendment 103

Proposal for a regulation

Article 2 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 89 – paragraph 3b a (new)

Text proposed by the Commission

Amendment

3ba. By [two years after the date of entry into force of this amending Regulation], ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.

Or. en

Justification

Mirroring Article 90 of EMIR. Financing and staffing will need to undergo very significant changes with the entry into force of this Regulation and it is therefore appropriate to review the provisions relating to these issues.

Amendment 104

Proposal for a regulation

Annex I – paragraph 1

Regulation (EU) No 648/2012

Annex III – section V – point a

Text proposed by the Commission

Amendment

(a) a CCP infringes Article 25c by providing incorrect or misleading information in response to a simple request for information by ESMA in accordance with Article 25c or in response to a decision by ESMA requiring information

(a) a CCP infringes Article 25c ***by failing to provide information in response to a decision requiring information pursuant to Article 25c(2), or*** by providing incorrect or misleading information in response to a simple request for information by ESMA in accordance with

in accordance with Article **25n**;

Article 25c(2) **or** 25c(3) or in response to a decision by ESMA requiring information in accordance with Article **25c(3)**;

Or. en

Justification

Alignment with CRAR, point 7 of Annex III Section II and correction of references

Amendment 105

Proposal for a regulation

Annex I – paragraph 1

Regulation (EU) No 648/2012

Annex III – section V – point b

Text proposed by the Commission

(b) a CCP provides incorrect or misleading answers to questions asked pursuant to Article 25d(1)(d);

Amendment

(b) a CCP provides incorrect or misleading answers to questions asked pursuant to Article 25d(1)(c) **or** 25d(1)(d);

Or. en

Justification

Article 25 d (1) (c) refers to oral or written explanations to be required so it might fall within the case described there.

Amendment 106

Proposal for a regulation

Annex I – paragraph 1

Regulation (EU) No 648/2012

Annex III – section V – point d

Text proposed by the Commission

(d) a Tier 2 CCP does not submit to an on-site inspection required by an **investigation** decision adopted by ESMA **taken** pursuant to Article 25e.

Amendment

(d) a Tier 2 CCP does not submit to an on-site inspection required by an **inspection** decision adopted by ESMA pursuant to Article 25e.

Or. en

EXPLANATORY STATEMENT

The spread of mandatory central clearing of OTC derivatives following the G 20 summit held in Pittsburgh in 2009 has greatly increased the importance of Central Clearing Counterparties (CCPs) in our financial system. As more transactions are cleared through CCPs, more risk becomes concentrated in those pieces of financial market infrastructure. Since CCPs are highly interconnected with each other and with other pieces of financial market infrastructure all along the post-trading chain, they have become systemic elements of financial markets, warranting specific attention and regulation.

Therefore, it has become crucial that the CCPs are subject to effective regulation concerning their activities, but also to effective and efficient enforcement of this regulation by competent supervisors.

In view of the high interconnectedness of CCPs and of the cross-border dimension of their activities, it is clear that those entities cannot be supervised only by their national competent authorities.

The specific nature of the activities of CCPs also calls for a specific type of supervision, that would mix some elements of capital market supervision with clear elements of prudential supervision, looking into the institution itself and its models.

The 2012 European Market Infrastructure Regulation (EMIR) established the regulatory framework for CCPs. In order to take into account the cross-border dimension of the activities of CCPs and their interconnectedness with the rest of the financial sector, EMIR already foresaw in 2012 a coordination role between national competent authorities (NCAs) for the European Securities Market Authorities (ESMA). It also foresaw the existence of colleges where national competent authorities of CCPs, supervisors of entities having relationships with the CCPs such as clearing members or linked financial market infrastructures and central banks could exchange information and coordinate their activities.

In view of the increased role of CCPs and of their limited number in the Union, a move towards a more European approach to the supervision of CCPs seems today appropriate and could allow to achieve economies of scale for supervisors as well as to take better into account the cross border externalities arising from the activities of CCPs.

Your rapporteur is therefore supportive of the approach of the Commission in which the European level, represented by ESMA, would be able to check the decisions taken by national supervisors and amend or object to them should this

be necessary.

This solution allows to take into account the local knowledge of competent authorities, that will remain in charge of preparing the decisions, while enabling the European interest to override national concerns in situations where this is necessary.

Your rapporteur also recognises the need for the involvement of central banks of issue of the main currencies of the financial instruments cleared in the supervision of CCPs, as proposed by the Commission. Bringing the prospective of central banks in the supervision of CCPs and requiring their consent on some decisions concerning the supervision of CCPs is necessary as the actions taken by CCPs in areas such as liquidity or settlement might interact with the conduct of monetary policy.

Your rapporteur underlines in regard that a fine balance needs to be found and that the role of central banks need to be properly calibrated so as to give them a say over exactly those supervisory decisions that might have an implications for monetary policy. This is a debate that is opened in this report and will continue on the occasion of discussions on the proposed amendment to Article 22 of the statute of the ECB/ESCB.

Your rapporteur also recognises the need for a specific solution within ESMA for the supervision of CCPs, taking into account the peculiarities of CCP's business.

However, your rapporteur believes that the option of an internal CCP Supervisory Committee within ESMA that would be specifically entrusted with all tasks related to the supervision of CCPs would be a more proportionate option than this of a wholly new ESMA configuration such as the executive session proposed by the Commission. This solution would work independently of any potential future changes to the organisation of ESMA and be easier to integrate smoothly within the structure of ESMA.

In order to ensure a linkage between the new structure and the rest of ESMA, your rapporteur proposes a decision-making procedure in which the decisions of the CCP Supervisory Committee would be subject to the non-objection of ESMA Board of Supervisors.

Your rapporteur underlines in this regards that it is crucial that the new body tasked with the supervision of CCPs within ESMA deals with all issues relating to the supervision of CCPs, whether Union CCPs or third country CCPs.

In parallel to the evolutions of CCPs and of their supervision within the EU, one

of the major weaknesses of the current EMIR was the regime applying to third country CCPs recognised by ESMA and allowed to provide clearing services in the Union. This regime was too weak and over-reliant on the third country supervisory authorities and was therefore not suited to the case of large third country CCPs with activities in the Union that could be of systemic importance for the Union financial system.

Your rapporteur is therefore pleased that the Commission proposes to address this weakness through a proportionate approach in which third country CCPs would be classified depending on their systemic importance for the Union and the supervisory powers enjoyed by ESMA would depend on the systemic nature of the CCP concerned.

The possibility left by the proposal for the Commission to, acting upon a recommendation of ESMA and the central bank of issue, deny recognition to a third country CCP on the basis of the significance of the activities of that CCP for the Union, is a last resort tool that should remain in place as an insurance mechanism to protect the financial stability of the Union.

However, the process of denying recognition should be made more fact-based and evidence-based and offer more certainty to market actors. Therefore, your rapporteur proposes to mitigate the discretionary nature of the procedure for denying recognition to a third country CCPs through the requirement for ESMA and the central bank of issue to conduct a prior impact analysis and consider clear criteria.