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*Plenary sitting*

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**A8-0190/2018**

25.5.2018

**\*\*\*I**  
**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 the opinion of the European Central Bank of 4 October 2017<sup>1</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 20 September 2017<sup>2</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0190/2018),
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.

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<sup>1</sup> OJ C 385 15.11.2017, p. 3.

<sup>2</sup> OJ C 434 15.12.2017, p. 63.

## Amendment 1

### AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

Whereas:

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

<sup>1</sup> OJ C 385 15.11.2017, p. 3.

<sup>2</sup> OJ C 434 15.12.2017, p. 63.

<sup>3</sup> Position of the European Parliament of ... (OJ ...) and decision of the Council of ...

- (1) Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>1</sup> requires standardised OTC derivatives contracts to be cleared through a Central Counterparty (CCP) in line with similar requirements in other G20 countries. That Regulation also introduced strict prudential, organisational and business conduct requirements for CCPs and established arrangements for their prudential supervision in order to minimise risks to users of a CCP and underpin financial stability. ***The G20 objectives set at the 2009 Pittsburgh summit should continue to be implemented in full in order to take full advantage of the benefits to financial stability.***
- (2) Since the adoption of Regulation (EU) No 648/2012, the volume of CCP activity in the Union and globally has grown rapidly in scale and in scope. The expansion in CCP activity, ***especially in the context of OTC equity derivatives and currency derivatives as asset classes in the original scope***, is set to continue in the coming years with the introduction of additional clearing obligations and the rise in voluntary clearing by counterparties not subject to a clearing obligation. The Commission's proposal of 4 May 2017<sup>2</sup> to amend Regulation (EU) No 648/2012 in a targeted manner, to improve its effectiveness and proportionality, will create further incentives for CCPs to offer central clearing of derivatives to counterparties and facilitate access to clearing to small financial and non-financial counterparties. ***These are the main elements that will ensure the G20 objectives are implemented in full for the sake of greater financial stability in the long term.*** Deeper and more integrated capital markets resulting from the Capital Markets Union (CMU) will further increase the need for cross-border clearing in the Union, thus further increasing the importance and the interconnectedness of CCPs within the financial system.
- (3) The number of CCPs currently established in the Union and authorised under Regulation (EU) No 648/2012 remains relatively limited, standing at 17 in June 2017. 28 third-country CCPs have been recognised under the equivalence provisions of that Regulation, allowing them also to offer their services to clearing members and trading venues established in the Union<sup>3</sup>. Clearing markets are well integrated across the Union but highly concentrated in certain asset classes and highly interconnected. The concentration of risk makes the failure of a CCP a low-probability but a potentially extremely high-impact event. In line with the G20 consensus, the Commission adopted a proposal for a Regulation on CCP Recovery and Resolution<sup>4</sup> in November 2016 to ensure that authorities are appropriately prepared to address a failing CCP, safeguarding financial stability and limiting taxpayer costs.

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<sup>1</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L201, 27.7.2012, p.1).

<sup>2</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories, COM/2017/0208 final.

<sup>3</sup> In accordance with Regulation (EU) No 648/2012, ESMA provides a list of the third-country CCPs that have been recognised to offer services and activities in the Union. The third-country CCPs are established in 15 countries covered by CCP equivalence decisions adopted by the Commission, including Australia, Hong Kong, Singapore, Japan, Canada, Switzerland, South Korea, Mexico, South Africa and the US CFTC, Brazil, UAE, Dubai International Financial Centre (DIFC), India and New Zealand.

<sup>4</sup> Proposal for a Regulation of the European Parliament and of the Council on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, and (EU) 2015/2365. COM(2016) 856 final.

- (4) Notwithstanding that legislative proposal and in light of the growing size, complexity and cross-border dimension of clearing in the Union and globally, the supervisory arrangements for Union and third-country CCPs should be revisited. By addressing identified problems at an early stage and establishing clear and coherent supervisory arrangements both for Union and third-country CCPs, the overall stability of the Union financial system would be reinforced and the potential risk of a CCP failure should be lowered even further.
- (5) In light of these considerations, the Commission adopted a Communication on 4 May 2017 on responding to challenges for critical financial market infrastructures and further developing the Capital Markets Union<sup>1</sup>, stating that further changes to Regulation (EU) No 648/2012 are necessary to improve the current framework that ensures financial stability and supports the further development and deepening of the CMU.
- (6) The supervisory arrangements under Regulation (EU) No 648/2012 rely mainly on the home-country authority. CCPs established in the Union are currently authorised and supervised by colleges of national supervisors, the European Securities and Markets Authority (ESMA), relevant members of the European System of Central Banks (ESCB), and other relevant authorities. The colleges rely on coordination and information-sharing by the national competent authority which bears the responsibility to enforce the provisions laid out in Regulation (EU) No 648/2012. Diverging supervisory practices for CCPs across the Union can create risks of regulatory and supervisory arbitrage, jeopardising financial stability and allowing for unhealthy competition. The Commission has drawn attention to these emerging risks and the need for greater supervisory convergence in its Communication on CMU of September 2016<sup>2</sup> and in the public consultation on the operations of the European Supervisory Authorities (ESAs)<sup>3</sup>.
- (7) The basic tasks to be carried out through the ESCB include the definition and implementation of the monetary policy of the Union and the promotion of the smooth operation of payment systems. Safe and efficient financial market infrastructures, in particular clearing systems, are essential for the fulfilment of these basic tasks, and the pursuit of the ESCB's primary objective of maintaining price stability. The relevant members of the ESCB, as central banks of issue of the currencies of the financial instruments cleared by CCPs, should be involved in CCP supervision, due to the potential risks that the malfunctioning of a CCP could pose to the pursuit of those basic tasks and the primary objective, affecting the instruments and counterparties which are used to transmit monetary policy. As a result, the central banks of issue should be involved in the assessment of a CCP's risk management. In addition, while the mandates of central banks and supervisors may overlap, there is a potential for misalignment when supervisory actions impact on key responsibilities of central banks

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, and the European Central Bank on Responding to challenges for critical financial market infrastructures and further developing the Capital Markets Union, Brussels, 4.5.2017, COM(2017) 225 final.

<sup>2</sup> Communication on the "State of the Union 2016: Completing the Capital Market Union – Commission accelerates reform"; 14 September 2016.

<sup>3</sup> Public consultation on the operations of the European Supervisory Authorities"; 21/03/2017 – 16/05/2017.



in areas such as price stability, monetary policy and the payment systems. In crisis situations, such misalignments can amplify the risks to financial stability if the assignment of responsibilities between authorities remains unclear.

- (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. The ECB and the *national central banks of the Member States whose currency is the euro constitute the Eurosystem and define and, through the ESCB, implement the monetary policy of the Union*. The specific role of the *Eurosystem* as the central bank of issue of the single currency of the Union should thus be acknowledged. *Attention should also be given to those currencies existing in the Union, other than the euro, and their respective central banks of issue*.
- (9) In view of the global nature of financial markets and of the need to address inconsistencies in the supervision of Union and third-country CCPs, ESMA's ability to promote convergence in the supervision of CCPs should be enhanced. In order to confer new roles and responsibilities on ESMA, *a new body should be established within the existing organisational structure of ESMA*.
- (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*.
- (10) A specific *ESMA internal committee* ("CCP Supervisory Committee") should be *established* within ESMA *for the purposes of preparing decisions and carrying out the tasks relating to the supervision of CCPs*, of *handling* tasks related to CCPs in general, and of *supervising* Union and third-country CCPs in particular. *The CCP Supervisory Committee should be composed of authorities experienced in the supervision of CCPs*. In order to *ensure the smooth integration of the CCP Supervisory Committee into the organisational structure of ESMA, while taking due account of the specific needs of CCP supervision, as well as the need to preserve a swift decision-making process, the CCP Supervisory Committee should have an independent Chair, who should be assisted by an independent Vice-Chair. The decisions of the CCP Supervisory Committee should be approved by the Board of Supervisors of ESMA where they relate to the most important areas of CCP supervision and should be subject to the non-objection of the Board of Supervisors in all other cases. Proper arrangements should be established in order to ensure the independence of the CCP Supervisory Committee within ESMA*.
- (11) In order to ensure a coherent supervisory approach and to *include all* relevant authorities involved in the supervision of CCPs, the *CCP Supervisory Committee* should be composed of *a permanent Chair, a permanent Vice-Chair, four permanent Directors and CCP-specific members*. *The Chair, the Vice-Chair and the Directors of the CCP Supervisory Committee* should act independently and objectively in the interest of the Union as a whole. *Members of the CCP Supervisory Committee who are 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 **have the right** 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 **both** independent 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.

- (11a) *In order to ensure a coherent supervisory approach, ESMA shall, in addition to the stress tests set out in this Regulation, take note of the stress tests carried out by CCPs as part of their recovery and resolution arrangements. Those stress tests, during which a CCP should consider its arrangements across the Union in terms of their aggregate effect on Union financial stability, should be included in crisis simulation exercises with respect to potential system-wide stress events.*
- (12) When deciding on issues concerning a CCP established within a Member State, the CCP **Supervisory Committee** 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 **Supervisory Committee** should participate in the decision-making process.
- (13) In order to ensure an appropriate, effective and swift decision-making process, the **Chair, the Vice-Chair and the Directors** of the CCP **Supervisory Committee**, 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 **Supervisory Committee** should take its decisions by a simple majority of its members, and the **Chair** should have a casting vote in case of a tie.
- (14) The CCP **Supervisory Committee** 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.
- (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 new supervisory powers of ESMA over CCPs* needs to be considered in the statement made by ESMA in accordance with Regulation (EU) No 1095/2010.
- (16) To provide for an appropriate level of expertise and accountability, the **Chair, the Vice-Chair** and the Directors 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. They should be chosen on the basis of an open selection procedure. The Commission should, *in consultation with the national competent authorities*, 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.

- (17) In order to ensure transparency and democratic control, as well as to safeguard the rights of the Union institutions, the *Chair, the Vice-Chair* and the Directors of the CCP *Supervisory Committee* should be accountable to the European Parliament and to the Council for any decisions taken on the basis of this Regulation.
- (18) The *Chair, the Vice-Chair* and the Directors of the CCP *Supervisory Committee* should act independently and objectively in the interest of the Union. They should ensure that appropriate account is taken of the proper functioning of the internal market as well as financial stability in each Member State and in the Union.
- (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 chair and manage colleges, and the permanent members of the CCP *Supervisory Committee* 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.
- (20) In order to ensure an appropriate and effective decision-making process, the *Chair* of the CCP *Supervisory Committee* should have one vote in the colleges, *while the Vice-Chair, the Directors of the CCP Supervisory Committee and* the representative of the Commission should be non-voting. The current members of the colleges should continue to exercise their current voting rights.
- (20a) *Under this amending Regulation, national competent authorities continue to exercise their current supervisory responsibilities under Regulation (EU) No 648/2012. However, in order to promote consistency in the supervision of CCPs throughout the Union, a division of competences depending on the decisions concerned should be established. Three categories of decisions should be distinguished: those for which competent authorities should obtain prior consent of ESMA, those for which competent authorities should consult ESMA and those for which competent authorities should remain solely responsible.*
- (20b) *Effective supervision of CCP relies on the building of competences, expertise and capabilities, as well as on the building of cooperative relationships and on exchanges between institutions. Since all of those are processes that develop over time and following their own dynamic, the design of a functional, effective and efficient supervisory system for CCPs should take into account its potential evolution in the long term. Therefore, the division of competences established in this amending Regulation is destined to evolve as the role and capacities of ESMA will develop.*

- (21) *Since disputes might arise between ESMA and the national competent authorities as regards some decisions to be taken*, a specific mechanism is introduced for cases of disagreement between ESMA and the national competent authorities. *Where a competent authority disagrees with the proposed amendment or the objection of ESMA, it should have the right to submit a reasoned request to the Board of Supervisors asking it to assess that objection or amendment. The Board of Supervisors may either endorse or reject ESMA's objections or amendments.* 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.
- (21a) **█** Relevant central banks of issue should be *consulted by ESMA or the competent authority, as applicable*, on certain decisions **█**, in particular when *such decisions relate* 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. *Upon conclusion of the period for consulting the central banks of issue, ESMA or the competent authority should make every effort to comply with the amendments proposed by the central banks. In case the draft decision does not include the amendments proposed by a central bank of issue, ESMA or the competent authority should inform that central bank of issue in writing stating its full reasons and an explanation of any significant deviation from these amendments.*
- (22) In order to enable ESMA to conduct its tasks with regards to CCPs effectively, both Union and third-country CCPs should pay supervisory fees for ESMA's supervisory and administrative tasks. *Those* fees should *be proportionate to the turnover of the CCP concerned and should* cover **█** the applications for authorisation of Union CCPs, the applications for recognition of third-country CCPs, and the annual fees associated with the tasks under ESMA's responsibility. The Commission should specify further in a delegated act 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 authorised and applicant Union CCPs recognised third-country CCPs.
- (23) The supervisory arrangements in this Regulation for third-country CCPs offering clearing services within the Union also require revision. Access to information, the ability to conduct on-site inspections and the possibility to share information on third-country CCPs between relevant Union and Member State authorities needs to be improved to avoid important financial stability implications for Union entities. There is also a risk that changes to a third-country CCP rules or to a third-country regulatory framework cannot be taken into account and could negatively affect the regulatory or supervisory outcomes, leading to an unlevel playing field between Union and third-country CCPs.
- (24) A significant amount of financial instruments denominated in the currencies of the Member States are cleared by recognised third-country CCPs. This will increase substantially when the United Kingdom withdraws from the Union and the CCPs established there will no longer be governed by the requirements of this Regulation. Cooperation arrangements agreed in the supervisory colleges will no longer be subject

to the safeguards and procedures of this Regulation, including the Court of Justice of the European Union. This implies significant challenges for Union and Member State authorities in safeguarding financial stability.

- (25) As part of its commitment to integrated financial markets, the Commission should continue to determine by way of equivalence decisions that the legal and supervisory frameworks of third countries fulfil the requirements of Regulation (EU) No 648/2012. In order to enhance the implementation of the current equivalence regime in relation to CCPs, the Commission should be able to, if necessary, specify further the criteria for assessing the equivalence of third-country CCP regimes. It is also necessary to empower ESMA with the supervision of regulatory and supervisory developments in those third-country CCP regimes that have been deemed equivalent by the Commission. This is in order to ensure that the equivalence criteria and any specific conditions set for their use continue to be satisfied by third countries. ESMA should report its findings to the Commission on a confidential basis.
- (26) The Commission is currently able to amend, suspend, review or revoke an equivalence decision at any time, in particular where developments occur in a third country which materially affect the elements assessed in accordance with the equivalence requirements under this Regulation. Where a third country's relevant authorities no longer cooperate with ESMA or other Union supervisors in good faith or fail to comply on a continuous basis with the applicable equivalence requirements, the Commission is also able to, inter alia, put an authority of the third country on notice or publish a specific recommendation. Where the Commission decides at any time to revoke a third country's equivalence, it is able to delay the date of application of that decision in order to address the risks to financial stability or of market disruptions. In addition to those powers currently available, the Commission should also be able to set specific conditions to ensure that the equivalence criteria continue to be fulfilled on an ongoing basis by the third country to which an equivalence decision relates. The Commission should also be able to set conditions ensuring that ESMA is able to effectively exercise its responsibilities in relation to third-country CCPs recognised under this Regulation or in relation to monitoring of regulatory and supervisory developments in third countries that are of relevance for adopted equivalence decisions.
- (27) In view of the growing cross-border dimension of CCPs and of the interlinkages in the Union financial system, it is necessary to improve the ability of the Union to identify, monitor and mitigate the potential risks related to third-country CCPs. The role of ESMA should therefore be enhanced to effectively supervise third-country CCPs that apply for recognition to provide clearing services in the Union. The involvement of the Union central banks of issue in the recognition and supervision of third-country CCPs that are active in the currency they issue should also be improved. Therefore, Union central banks of issue should be consulted on certain aspects affecting their monetary policy responsibilities in relation to financial instruments denominated in Union currencies which are cleared to a significant extent in CCPs located outside the Union.
- (28) Once the Commission has determined the legal and supervisory framework of a third country as equivalent to the Union framework, the process to recognise CCPs from

that third country should take into account the risks those CCPs present for the financial stability of the Union or for the Member State.

- (29) When considering the application of a third-country CCP for recognition, ESMA should assess the degree of systemic risk that the CCP presents to the financial stability of the Union *or of one or more of its Member States*. *When conducting that assessment, ESMA should take into consideration the business carried out by the CCP in the Union as well as other business of the CCP outside the Union, to the extent that such business outside the Union is likely to affect the overall complexity of the CCP.*
- (29a) *ESMA should assess the degree of systemic risk that a CCP applying for recognition presents to the financial stability of the Union or of one or more of its Member States on the basis of objective and transparent criteria set out in this Regulation. A Commission delegated act should further specify those criteria. That delegated act should take into account, in specifying those criteria, the nature of the transactions cleared by the CCP, including their complexity, price volatility and average maturity, as well as the transparency and liquidity of markets concerned and the degree to which the CCP's clearing activities are denominated in euro or another Union currency. In this regard, specific features concerning certain agricultural derivative contracts listed and executed on regulated markets in third countries, which relate to markets that largely serve domestic non-financial counterparties in that third country who manage their commercial risks through those contracts, may pose a negligible risk to clearing members and trading venues in the Union as they have a low degree of systemic interconnectedness with the rest of the financial system. Where a framework for the recovery and resolution of CCPs is in force in the third country of establishment of the CCP applying for recognition, that should also be taken into account by ESMA in its analysis of the degree of systemic risk presented to the financial stability of the Union or of one or more of its Member States by that CCP.*
- (30) CCPs that are not systemically important to the financial stability of the Union or *of one or more* of its Member States should be considered as 'Tier 1' CCPs. CCPs that are systemically important, or likely to become systemically important, to the financial stability of the Union or *of one or more* of its Member States should be considered as 'Tier 2' CCPs. Where ESMA determines that a third-country CCP is not systemically important to the financial stability of the Union *or of one or more of its Member States*, the existing recognition conditions under Regulation (EU) No 648/2012 should apply to that CCP. Where ESMA determines that a third-country CCP is systemically important, additional requirements proportionate to the degree of risk presented by that CCP should be established. ESMA should only recognise such a CCP where that CCP complies with these requirements.
- (31) The additional requirements should include certain prudential requirements set out in Regulation (EU) No 648/2012 that aim to increase the safety and efficiency of a CCP. ESMA should be directly responsible for ensuring that a systemically-important third-country CCP complies with those requirements. Related requirements should also enable ESMA to carry full and effective supervision of that CCP.

- (32) In order to ensure the proper involvement of the central bank(s) of issue, the systemically important third-country CCP should also fulfil *relevant* requirements that the central bank(s) of issue consider necessary *as provided for in this Regulation*. The central bank(s) of issue should provide ESMA with confirmation whether or not the CCP complies with *those* additional requirements *within 150 days of the submission of a complete application by the CCP*.
- (32a) *Where a central bank of issue decides to impose an additional requirement on a systemically important third country CCP, it should strive to make its decision as transparent as possible, while adequately respecting the need to protect confidential or sensitive information.*
- (32b) *Central banks of issue should assess the resilience of recognised third country CCPs to adverse market developments having regard to the risk they pose to the stability of the currency of the central bank of issue, the transmission of monetary policy and the smooth functioning of payment systems. In such cases, cooperation and information sharing between central banks of issue and ESMA should be ensured to prevent duplication.*
- (32c) *Exceptional situations affecting the transmission of monetary policy or the smooth functioning of payment systems may, to the extent allowed under the institutional framework of a central bank of issue, call for the imposition on systemically important third country CCPs of requirements relating to liquidity risks, settlement arrangements, margins, collateral or interoperability arrangements. In such situations, central banks of issue and ESMA should cooperate and share information, in particular their assessment of the risks that the situation entails and its possible duration, as well as the envisaged effects of the requirements to be imposed.*
- (32d) *Cooperation and information sharing between the Union and third country supervisors are essential in order to ensure the effective supervision of third country CCPs and to enable all relevant authorities to react to emergency situations in a coordinated, effective and efficient manner. Therefore, ESMA should put in place cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation that should cover all elements necessary to ensure, among others, the smooth exchange information, the coordination of supervisory activities, the effective monitoring of regulatory and supervisory developments in the third country and effective cooperation in emergency situations.*
- (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, *in agreement with* the relevant central bank(s) of issue, *concludes* that a third-country CCP is of such systemic importance that *its compliance with the additional requirements set out in this Regulation does not sufficiently address the financial stability risk for the Union or for one or more of its Member States*, ESMA should *have the right* to recommend to the Commission that that CCP should not be recognised *and to identify specific clearing services or activities that it considers should only be provided to clearing members and trading*

*venues established in the Union by a CCP authorised in accordance with this Regulation. On the basis of that recommendation, the Commission should be able to adopt a delegated act declaring that some or all services provided by that CCP shall only be provided to clearing members and trading venues established in the Union by a CCP established in the Union and authorised as such. It should be possible for that delegated act to specify an appropriate adaptation period for the CCP, its clearing members and their clients, together with the conditions under which that CCP may be temporarily recognised during that adaptation period and any measures that should be taken during this period in order to limit the potential costs to clearing members and their clients, in particular those established in the Union.*

- (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 or every five years depending on the extent to which the financial instruments cleared by the CCP are denominated in Union currencies. Reviews should also take place whenever a recognised third country CCP has extended the range of its activities and services in the Union. Further to such reviews, without prejudice to its right to recommend to the Commission that a CCP should not be recognised, ESMA should be able to re-classify a CCP from Tier 1 to Tier 2 or vice versa. An adaptation period should be allowed if reclassification from Tier 1 to Tier 2 occurs.*
- (35) ESMA should also be able to take into account the extent to which the compliance of a systemically-important third-country CCP with the requirements applicable in that third country can be compared to the compliance of that CCP with the requirements of Regulation (EU) No 648/2012. *When conducting that assessment, ESMA should take into account, where relevant, whether the Commission has adopted an implementing act determining that the legal and supervisory arrangements of the third country where the CCP is established are equivalent to those of this Regulation and any conditions to which the application of that implementing act may be subject. In order to ensure proportionality, ESMA should also consider, when conducting that assessment, the extent to which the financial instruments cleared by the CCP are denominated in Union currencies.* The Commission should adopt a delegated act specifying further the modalities and conditions to assess such comparable compliance.
- (36) ESMA should have all the powers necessary to supervise recognised third-country CCPs to ensure their ongoing compliance with the requirements of Regulation (EU) No 648/2012. In certain areas, **█** the central bank(s) of issue *should be consulted on those aspects of the draft decision which relate to the currency that they issue. Upon conclusion of the period for consulting the central banks of issue, the CCP Supervisory Committee should make every effort to comply with the amendments proposed by them. Where the CCP Supervisory Committee does not reflect the amendments proposed by a central bank of issue in its draft decision to be submitted to the Board of Supervisors, the CCP Supervisory Committee should inform that central bank of issue thereof in writing stating its full reasons and giving an explanation of any significant deviation from the amendments proposed.*



**(36a) *In order to facilitate the exchange of information regarding third country CCPs, colleges for third country CCPs should be established. Such colleges should bring together permanent members of the CCP Supervisory Committee, competent authorities of Member States, central banks of issues and the supervisors of the entities established in the Union on which the operations of the third country CCPs might have an impact, namely clearing members, trading venues and central securities depositories. Colleges for third country CCPs might request of the Chair of the CCP supervisory committee to discuss specific matters in relation to a CCP established in a third country.***

- █
- (38) ESMA should be able to impose periodic penalty payments to compel third-country CCPs to end an infringement, to supply complete and correct information required by ESMA or to submit to an investigation or an on-site inspection.
- (39) ESMA should be able to impose fines on both Tier 1 and Tier 2 CCPs where it finds that they have committed, intentionally or negligently, an infringement of this Regulation by providing incorrect or misleading information to ESMA. In addition, ESMA should be able to impose fines on Tier 2 CCPs where it finds that they have committed, intentionally or negligently, an infringement of the additional requirements applicable to them in this Regulation.
- (40) Fines should be imposed according to the level of seriousness of the infringement. Infringements should be divided into different groups for which specific fines should be allocated. In order to calculate the fine relating to a particular infringement, ESMA should apply a two-step methodology consisting of setting a basic amount and adjusting that basic amount, if necessary, by certain coefficients. The basic amount should be established by taking into account the annual turnover of the third-country CCPs concerned and the adjustments should be made by increasing or decreasing the basic amount through the application of the relevant coefficients in accordance with this Regulation.
- (41) This Regulation should establish coefficients linked to aggravating and mitigating circumstances in order to give the necessary tools to ESMA to decide on a fine which is proportionate to the seriousness of the infringement committed by a third country CCP, taking into account the circumstances under which that infringement has been committed.
- (42) The decision to impose fines or periodic penalty payments should be based on an independent investigation.
- (43) Before deciding whether to impose fines or periodic penalty payments, ESMA should give the persons subject to the proceedings the opportunity to be heard in order to respect their rights of defence.
- (44) ESMA should refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical facts, or from facts which are substantially the same, has acquired the force of *res judicata* as a result of criminal proceedings under national law.

- (45) ESMA's decisions imposing fines and periodic penalty payments should be enforceable and their enforcement should be subject to the rules of civil procedure which are in force in the State in the territory of which it is carried out. Rules of civil procedure should not include criminal procedural rules but could include administrative procedural rules.
- (46) In the case of an infringement committed by a Tier 2 CCP, ESMA should be empowered to apply a range of supervisory measures, including requiring a Tier 2 CCP to bring the infringement to an end, and, as a last resort, withdrawing the recognition where a Tier 2 CCP has seriously or repeatedly infringed this Regulation. The supervisory measures should be applied by ESMA taking into account the nature and seriousness of the infringement and should respect the principle of proportionality. Before taking a decision on supervisory measures, ESMA should give the persons subject to the proceedings an opportunity to be heard in order to comply with their rights of defence.
- (47) The validation of significant changes to models and parameters adopted to calculate a CCP's margin requirements, default fund contributions, collateral requirements, and other risk-control mechanisms should be aligned with the new requirement of a prior consent of ESMA with certain decisions of the national competent authority with regard to CCPs established in the Union. To simplify the model validation proceedings, one validation by the national competent authority that is subject to ESMA's prior consent should replace the two validations that national competent authority and ESMA were required to conduct independently. In addition, the interplay of that validation and the college decision should be clarified. The preliminary adoption of a significant change to that models or parameters should be possible where needed, especially where their swift change is necessary to ensure the soundness of the CCP's risk management.
- (48) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the further specification of the type of fees, the matters for which fees are due, the amount of the fees to be paid and the manner in which they are to be paid; ***the specification of the conditions under which the criteria are specified to determine if a third-country CCP is, or is likely to become, systemically important for financial stability of the Union or for one or more of its Member States as well as for specifying the criteria for considering that a CCP is of substantial systemic importance; the specification of additional requirements that the central banks of issue may impose on a third country systemically important CCP; the specification that the services provided by a third-country CCP that shall only be provided after authorisation in accordance with Article 14 and any related adaptation period;*** the further specification of the criteria to be used in its equivalence assessments of third countries; specify how and under what conditions certain requirements shall be complied with by third-country CCPs; further rules of procedure relating to the imposition of fines or periodic penalty payments, including provisions on the rights of defence, time limits, the collection of fines or periodic penalty payments and the limitation periods for the imposition and enforcement of penalty payments or fines; measures to amend Annex IV in order to take account of developments in the financial markets.

- (49) To ensure uniform conditions for the implementation of this Regulation, and in particular with regard to the recognition of third-country CCPs and the equivalence of third countries' legal frameworks, implementing powers should be conferred on the Commission.
- (50) Since the objectives of this Regulation, namely to increase the safety and efficiency of CCPs by laying down uniform requirements for their activities, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (51) The use by ESMA of its power to recognise a third-country CCP as a Tier 1 or a Tier 2 CCP should be deferred until the criteria to allow the assessment of whether or not a third-country CCP is systemically important, or likely to become, for the financial system of the EU or one or more of its Member States are further specified.
- (52) Regulation (EU) No 1095/2010 and Regulation (EU) No 648/2012 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

█

## Article 2

### Amendments to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

1. In Article 6, paragraph 2, point (b) is replaced by the following:

“(b) the CCPs that are authorised in accordance with Article 17 or recognised in accordance with Article 25 and the date of authorisation or recognition respectively, indicating the CCPs that are authorised or recognised for the purpose of the clearing obligation”.

- 1a. In Article 15, the following paragraphs are inserted:*

*“1a. For the purpose of paragraph 1, the extension of business to new activities or services shall require an extension of authorisation where one of the following conditions is met:*

*(a) the new service or activity exposes the CCP to new or increased risks;*

*(b) the new service is provided or the new activity takes place in respect of a class of financial instruments with a different risk profile or with material differences from the products already cleared by the CCP;*

*(c) the new service is provided or the new activity takes place in respect of a class of financial instruments which were not specified in the CCP's authorisation decision.*

***1b. In order to ensure uniform conditions of application of paragraph 1, ESMA, in close cooperation with the ESCB, shall develop draft regulatory technical standards establishing a list of indicators further defining the conditions referred to in paragraph 1a.***

***ESMA shall submit those draft regulatory technical standards to the Commission by... [12 months after the 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.***

2. In Article 17, paragraph 3 is replaced by the following:

“3. Within 30 working days of receipt of the application, the competent authority, in consultation with ESMA, shall assess whether the application is complete. Where the application is not complete, the competent authority shall set a deadline by which the applicant CCP has to provide additional information. Upon receipt of such additional information, the competent authority shall immediately transmit it to ESMA and the college established in accordance with Article 18(1). After assessing, in consultation with ESMA, that an application is complete, the competent authority shall notify the applicant CCP and the members of the college accordingly.”

**2a. In Article 17, the fourth subparagraph of paragraph 4 is replaced by the following:**

“Where a joint opinion by mutual agreement as referred to in the third subparagraph has not been reached and a **simple** majority of **■** the college **has** expressed a negative opinion, any of the competent authorities concerned **■** may, within 30 calendar days of the adoption of that negative opinion, refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.”

3. Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Within 30 calendar days of the submission of a complete application in accordance with Article 17, the CCP's competent authority shall establish a college to facilitate the exercise of the tasks referred to in Articles 15, 17, 49, 51 and 54.

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

(b) in paragraph 2, point (a) is replaced by the following:

“(a) the permanent members of the CCP *Supervisory Committee* referred to in Article 22a(2)(a);”

(c) in paragraph 2, point (c) is replaced by the following:

“(c) the competent authorities responsible for the supervision of the *three* clearing members of the CCP with the largest contributions to the default fund of the CCP referred to in Article 42 on an aggregate basis over a one-year period, including, where relevant, the ECB in *the framework of the tasks concerning the prudential supervision of credit institution within a single supervisory mechanism conferred upon it by Council Regulation (EU) No 1024/2013<sup>1</sup>, if those authorities express interest in the participation in this college.*

(ca) in paragraph 2, point (ca) is inserted:

“(ca) *the competent authorities of clearing members, other than those referred to in point (c), subject to the consent of the CCP’s competent authority. Those competent authorities shall request the consent of the competent authority of the CCP to participate in the college, justifying the request based on its assessment of the impact a CCP’s financial distress may have on financial stability of the local market of its currency of issue. In case the competent authority of the CCP does not grant the request, the CCP’s competent authority shall provide full and detailed reasons in writing.*”

(cb) in paragraph 4, point (ca) is inserted:

“(ca) *the preparation of an opinion to the CCP Supervisory Committee where that committee is required to provide its consent or is consulted in accordance with Article 21a.*”

(cc) The following paragraph 4a is inserted:

“*Where any member of the college assesses, on the basis of information exchanged pursuant to point (b), that the risk management practices of a CCP do not comply with all the requirements laid down in this Regulation or otherwise entail shortcomings in its resilience, that member may inform the competent authority and the college of the issue and request it to be discussed within the college. The Chair of the college may subsequently include a discussion on the issue identified by the member in the agenda of the next meeting of the college. Further to that discussion, if at least one third of college members other than the member who originally requested such discussion support the drafting of a recommendation to address the issue identified and improve the resilience of the CCP, the Chair shall ask the college to draft such a recommendation.*

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<sup>1</sup> 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.”

*The college may adopt the recommendation referred to in the first subparagraph on the basis of a simple majority of its members.*

*Within 30 days of the adoption of the recommendation by the college, ESMA shall assess the issue and the recommendation and decide whether to request any specific supervisory action pursuant to Article 21a (3).*

*It shall immediately inform the competent authority and the college. The competent authority shall keep the college informed of any subsequent action or absence thereof with respect to the recommendation.*

*Where the competent authority has failed to take action within 90 days after the adoption of the recommendation and where failing to take action may result in non-compliance with the requirements laid down in this Regulation, any member of the college may, within 30 days after the end of the 90 days period, refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.”*

(cd) *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.”

3a. *In Article 19, the following paragraph 1a is inserted:*

*“1a. At the request of any member of the college and upon adoption by a majority of the college, the opinion may include recommendations to improve the resilience of the CCP.”*

4. In Article 19, paragraph 3 is replaced by the following:

“3. A majority opinion of the college shall be adopted on the basis of a simple majority of its members.

For colleges up to and including 12 members, a maximum of two college members belonging to the same Member State shall have a vote and each voting member shall have one vote. For colleges with more than 12 members, a maximum of three members belonging to the same Member State shall have a vote and each voting member shall have one vote.

Where the ECB is a member of the college pursuant to points (a), (c) and (h) of Article 18(2), it shall have the following number of votes:

- (i) a maximum of 2 votes in colleges up to and including 12 members;
- (ii) a maximum of 3 votes for colleges with more than 12 members.

The representative of the Commission shall be non-voting member. The *Chair* of the CCP *Supervisory Committee* shall have one vote, *the Vice-Chair and the Directors of the CCP Supervisory committee shall be non-voting members in the colleges.*”

5. In Article 20, paragraph 6 is replaced by the following:

“6. The CCP’s competent authority shall send ESMA and the members of the college its fully reasoned draft decision, which shall take into account the reservations of the members of the college.”

6. Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Without prejudice to the role of the college, the competent authorities referred to in Article 22, in *close* cooperation with ESMA, shall review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation and evaluate the risks, *which shall include, at least, financial, operational and cyber risks*, to which CCPs are, or might be, exposed.”

(b) paragraph 3 is replaced by the following:

“3. ESMA shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 *having particular* regard to the size, systemic importance, nature, scale, complexity of the activities *and interconnectedness with other financial market infrastructures* of the CCPs concerned. The review and evaluation shall be updated at least on an annual basis.

█ CCPs shall be subject to *appropriate* on-site inspections *where necessary*. ESMA staff *may decide* to participate in these on-site inspections.

The competent authority shall forward to ESMA any information received from the CCPs and shall request from the relevant CCP any information sought by ESMA which it cannot provide.”

(ba) *in paragraph 6, point (a) of the second subparagraph is replaced by the following:*

“(a) conduct a peer review analysis of the supervisory activities of all competent authorities in relation to the authorisation and the supervision of CCPs in accordance with Article 30 of Regulation (EU) No 1095/2010, *as well as a comparative analysis of the risk management practices of all CCPs authorised in accordance with Article 14 this Regulation*; and”

7. In Title III, Chapter 2, the following Articles 21a, 21b and 21c are inserted:

"Article 21a

*Procedures for cooperation and decision-making with regards to authorised CCPs*

1. Competent authorities, *when carrying out their duties in accordance with Article 22(1)*:

*(a) Shall prepare and submit draft decisions to ESMA for consent prior to adoption of any of the decisions adopted pursuant to or in the carrying out of their duties resulting from the requirements set out in Articles 14, 15, 20, 30, 31, 32, 33, 34, 35, 36 and 49 of this Regulation;*

*(b) shall prepare and submit draft decisions to ESMA for consultation prior to the adoption of any of the decisions adopted pursuant to or in the carrying out of their duties resulting from the requirements set out in Articles 24, 54 of this Regulation;*

*(c) may adopt, without prior submission to ESMA for consent or consultation, decisions adopted pursuant to or in the carrying out of their duties resulting from the requirements set out in Articles 7, 8, 16, 21, 26, 27, 28, 29, 37, 38, 39, 40,41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53 of this Regulation and Articles 35 and 36 of Regulation (EU) No 600/2014.*

3. ESMA shall transmit to competent authorities any relevant information which may result in the adoption of a decision referred to in paragraph 1 and may request specific supervisory action, including withdrawal of authorisation. Competent authorities shall keep ESMA informed of any subsequent action or inaction thereto.

4. *Where a draft decision is submitted to ESMA for consent pursuant to point (a) 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 *draft* decision. Where ESMA proposes amendments or objects to a draft decision, it shall provide full and detailed reasons, in writing.

5. *Where a draft decision is submitted to ESMA for consent pursuant to point (a) of paragraph 1 and ESMA proposes amendments*, the competent authority may only adopt the decision as amended by ESMA.

*Where a draft decision is submitted to ESMA for consent pursuant to point (a) of paragraph 1 and ESMA objects to a final draft decision*, the competent authority shall not adopt that decision.

6. *Where a draft decision is submitted to ESMA for consent pursuant to point (a) of paragraph 1 and the competent authority disagrees with the proposed amendment or the objection of ESMA*, it may submit within 5 days a reasoned request to the Board of Supervisors referred to in Article 6(1) of Regulation (EU) No 1095/2010 to assess that objection or amendment. The Board of Supervisors shall either endorse or reject ESMA's objections or amendments within 10 days of that request and paragraph 5 shall apply accordingly.



**6a. Where a draft decision is submitted to ESMA for consultation pursuant to point (b) of paragraph 1, ESMA shall reply to the consultation within a maximum period of 15 calendar days after having been notified of that draft decision.**

**6b. Where a draft decision is submitted to ESMA for consultation pursuant to point (b) of paragraph 1, the competent authority shall give due consideration to the suggestions of ESMA.**

7. Without prejudice to the powers of the Commission under Article 258 TFEU, ESMA may adopt a decision addressed to a financial market participant requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice in the following cases:

(a) where a competent authority does not comply with paragraph 5 in case of ESMA's objection or amendments to a final draft decision;

(b) where a competent authority, following a request from ESMA in accordance with paragraph 3, fails to take the requested action within a reasonable time where that failure results in a financial market participant breaching the applicable requirements in Titles IV and V of this Regulation.

Decisions adopted pursuant to the first subparagraph shall prevail over any previous decision adopted by the competent authorities on the same matter.

#### **Article 21aa**

#### **Consultation of the central bank of issue**

**With regard to decisions taken pursuant to Articles 14, 15, 20, 41, 44, 46, 50 and 54, the CCP Supervisory Committee shall consult each central bank of issue referred to in Article 18(2)(h) on those aspects of the draft decision which relate to the currency it issues.**

**Each central bank of issue shall respond to the request for consultation within 10 working days of transmission of the draft decision.**

**Where, having regard to Article 24, the CCP Supervisory Committee assesses that the situation encountered is an emergency situation, the period referred to in the previous subparagraph shall not exceed 24 hours.**

**Upon conclusion of the period for consulting the central banks of issue, the CCP Supervisory Committee or the relevant competent authority shall make every effort to comply with the amendments proposed by the central banks of issue.**

**Where a draft decision is submitted to ESMA for consent in accordance with point (a) of Article 21(1) or for consultation in accordance with point (b) of Article 21(1) and the competent authority does not reflect in its draft decision to be submitted to the CCP Supervisory Committee the amendments proposed by a central bank of issue, the CCP Supervisory Committee shall inform that central bank of issue in writing stating its full reasons and giving an explanation of any significant deviation from the amendments proposed.**

Article 21c  
Fees

1. CCPs shall pay the following fees:

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

(c) annual fees associated with ESMA's tasks in accordance with this Regulation.

***1a. The fees referred to in paragraph 1 shall be proportionate to the turnover of the CCP concerned and shall 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.***

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

(a) *the types of fees;*

(b) *the matters for which fees are due;*

(c) *the amount of the fees;*

*(ca) 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);”*

**7a. The following Articles are 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 (CCP Supervisory Committee).***

***The CCP Supervisory Committee 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, who shall be voting;*

*(ii) a Vice-chair, who shall carry out the tasks of the Chairperson in his or her absence and who shall be voting;*

*(iii) four directors, who shall be voting;*

*(iv) one representative of the ECB, who shall be non-voting; and*

*(v) one representative of the Commission, 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 referred to in Article 22 for each CCP established in the Union in relation to which the CCP is convened. Those representatives shall be voting but, where a Member State has designated several competent authorities, this Member State shall have no more than one voting right under this point.*

*(ii) a representative of each of the relevant central banks of issue referred to in point (h) of Article 18(2) for each CCP established in the Union in relation to which the CCP Supervisory Committee is convened, who shall be non-voting;*

*(iii) where the CCP supervisory committee is convened in relation to decisions or discussions pertaining to Articles 41, 44, 46, 50 and 54, representatives of those central banks of issue of Union currencies cleared or to be cleared by the CCP in relation to which the CCP Supervisory Committee is convened which are not members under point (ii), who shall be non-voting.*

*The Chair may invite as observers to the meetings of the CCP Supervisory Committee, where appropriate and necessary, other members of the college of the relevant CCP as referred to in Article 18(2).*

*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 may be invited, where and as appropriate, as observers.*

*Where discussing decisions pertaining to Article 25(2a) and(2c) and Articles 25b, 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, of all authorities referred to in point (b)(i) 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 preparing draft decisions to be submitted to the Board of Supervisors:*

*(a) where ESMA is required to provide its consent or is consulted in accordance with Article 21a; and*

*(b) where ESMA recognises and supervises third-country CCPs in accordance with Articles 25, 25a, 25b, 25c, 25d, 25e, 25f, 25g, 25h, 25i, 25j, 25m and 25n.*

*4. The Chair of the CCP Supervisory Committee and the Directors referred to in point (i) of Article 22a(1)(a) shall be full-time, independent professionals. They 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. They 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 European Parliament and the Council shall be kept duly informed at every stage of that procedure in a timely manner.*

*The term of office of the Chair, Vice-Chair and Directors of the CCP Supervisory Committee shall be five years and may be extended once. The Chair, Vice-Chair and Directors of the CCP Supervisory Committee shall not hold any other office at Union, national or international level.*

*The Commission shall, in consultation with national supervisory authorities, provide to the European Parliament a shortlist of candidates for the position of Chair, Vice-Chair and Directors and shall inform the Council of the shortlist.*

*The Commission shall submit a proposal for the appointments of the Chair, Vice-Chair and Directors to the European Parliament for approval. Following the approval of that proposal, the Council shall adopt an implementing decision to appoint the Chair, Vice-Chair and the Directors. The Council shall act by qualified majority.*

*Where the Chair, the Vice-Chair or one of the Directors 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, or of the Vice-Chair or of one of the Directors 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.*

#### *Article 22b Independence*

*In relation to the tasks of the Chair, Vice-Chair and Directors of the CCP Supervisory Committee shall neither seek nor 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 Chair, Vice-Chair and the Directors of the CCP Supervisory Committee referred to in point (i) of Article 22a(1)(a) in the performance of his or her tasks. In accordance with the Staff Regulations referred to in Article 68 of Regulation (EU) No 1095/2010, Chair, Vice-Chair and the Directors of the CCP Supervisory Committee referred to in point (i) of 22a(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.*

*The Chair Vice-Chair and Directors of the CCP Supervisory Committee shall be subject to an appropriate intermediary period before taking up this position and after completing this role.*

#### *Article 22c Report*

*1. The European Parliament or the Council may invite the Chair, the Vice-Chair or any of the Directors of the CCP Supervisory Committee to make a statement while fully respecting their independence., They shall make a statement before the European Parliament and answer any questions put by its Members whenever so requested.*

*2. The Chair of the CCP Supervisory Committee shall report in writing on the main activities of the CCP Supervisory Committee to the European Parliament where requested and at least 15 days before making the statement referred to in paragraph 1.*

**3. The Chair shall report any relevant information requested by the European Parliament on an ad-hoc basis.**

**4. Upon request, the Chair of the CCP Supervisory Committee shall hold confidential in camera oral discussions with the Chair and Vice-Chairs of the competent committee of the European Parliament where such discussions are required for the exercise of the European Parliament's powers under the TFEU.**

**5. During any investigations by the European Parliament, the CCP Supervisory Committee shall cooperate with the European Parliament, subject to the TFEU and Regulations referred to in Article 226 thereof. Within six months of the appointment of the Chair, the Vice Chair and the Directors of the CCP Supervisory Committee, the CCP Supervisory Committee and the European Parliament shall conclude appropriate arrangements on the practical arrangements for the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the CCP Supervisory Committee by this Regulation. Subject to the power of the European Parliament pursuant to Article 226 TFEU, those arrangements shall cover, inter alia, access to information, including rules on the handling and protection of classified or otherwise confidential information, cooperation in hearings, confidential oral discussions, reports, responding to questions, investigations and information on the selection procedure of the Chair, the Vice-Chair, and the Directors referred to in Article 22a(1)(a) of this Regulation.**

#### **Article 22d**

##### **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.**

#### **Article 22e**

##### **Decision-making within the Board of Supervisors**

**With regard to draft decisions submitted in accordance with Article 21a(1) and regarding Articles 14, 15, 20, 41, 44, 46, 50, 54 as well as, for CCPs determined to be Tier 2 CCPs in accordance with Article 25(2a), draft decisions submitted in relation to Articles 25a, 25(2a), 25(2b), 25(2c), 25(5), the draft decisions submitted by the CCP Supervisory Committee shall be adopted by a simple majority of the members of the Board of Supervisors.**

**With regards to decisions pursuant to Articles other than those referred to in the first subparagraph, the draft decisions submitted by the CCP Supervisory Committee shall be considered as adopted, if approved by a simple majority, unless they are rejected by members representing a blocking minority of the votes as defined in Article 16(4) TEU and in Article 3 of the Protocol (No 36) on transitional provisions within ten working days from their transmission.**

**In situations of particular urgency, the period for examining a draft decision shall not exceed 24 hours. Where the Board of Supervisors rejects a draft decision, it shall state the reasons for doing so in writing.**

8. Article 24 is replaced by the following:

“The CCP’s competent authority or any other relevant authority shall inform ESMA, the college, the relevant members of the ESCB and other relevant authorities without undue delay of any emergency situation relating to a CCP, including developments in financial markets, which may have an adverse effect on market liquidity, the transmission of monetary policy, the smooth operation of payment systems and the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.”

9. Article 25 is amended as follows:

(-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 4.*”

(a) in paragraph 2, the following point (e) is added:

(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.*”

(b) the following paragraphs 2a, 2b and 2c are inserted:

“2a. ESMA shall, *after consulting the central banks of issue of the most relevant Union currencies of the financial instruments cleared or to be cleared by the CCP*, determine whether a *CCP* is systemically important or likely to become systemically important for the financial stability of the Union or *of* one or more of its Member States (Tier 2 CCP) by taking into account all of the following criteria:

(a) the nature, size and complexity of the CCP's business *in the Union as well as other business of the CCP outside the Union to the extent such business is likely to affect the overall complexity of the CCP*, including:

(i) 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 *clearing members established in the Union, and to the extent possible to their clients and indirect clients established in the Union, including where any of those members or clients have been designated as global systemically important institutions (G-SIIs) or as other systemically important institutions (O-SIIs) pursuant to Article 131 of Directive 2013/36/EU;*

(ii) *the risk profile of the CCP, in terms of, among others, legal, operational and business risk, and paying particular attention to cyber-risk.;*

(b) the effect that the failure of or a disruption to the CCP would have on financial markets, financial institutions, or the broader financial system, or on the financial stability of the Union or *of* one or more of its Member States;

(c) the CCP's clearing membership structure *as well as the structure of its clearing members' network of clients and indirect clients, where those can be readily identified, in particular the proportion of its clearing members and their clients and indirect clients established in the Union*;

(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 one or more of its Member States*;

*(da) the immediate and medium-term effect that the failure of or a disruption to the CCP would have on the liquidity of the markets served or on the monetary policy implementation of the central banks of issue.*

The Commission shall adopt a delegated act in accordance with Article 82 to further specify the criteria set out in the first subparagraph within [*12 months from the entry into force of this Regulation*].

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) and (d), the following conditions are fulfilled:

(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;

(b) the CCP complies *or has put appropriate measures in place to comply, on an ongoing basis*, with any *of the following* requirements, *which the central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP may have* imposed in the carrying out of their monetary policy tasks:

*(i) the reporting of any requested information to the relevant central bank of issue where that information has not otherwise been obtained by ESMA;*

*(ii) the commitment from the CCP to fully and duly cooperate with the central bank of issue in the context of its assessment of the CCP's resilience to adverse market developments;*



*(iii) the opening by the CCP of an overnight deposit account with the central bank of issue in accordance with relevant access criteria and requirements of the central bank of issue;*

*(iv) the application, in exceptional situations, of requirements consistent with the requirements set out in Article 16 and in Titles IV and V of this Regulation, within the competences of the central bank of issue and relating to liquidity risk controls, settlement arrangements, margins, collateral or interoperability arrangements, in order to address systemic liquidity risk affecting the transmission of monetary policy or the smooth functioning of payment systems.*

*Within 150 days of the submission of a complete application, the central banks of issue concerned shall provide ESMA with written confirmation that the CCP complies, or has put appropriate measures in place to comply on an ongoing basis, with any requirements referred to in the first subparagraph.*

*Where the central banks of issue concerned have not provided a written response to ESMA concerning the compliance of the CCP with one or more of the requirements listed in points (i) to (iv), ESMA may consider the corresponding requirements to be fulfilled.*

*The central bank of issue shall provide a duly justified and reasoned explanation of its decision to impose any of the requirements set out in the first subparagraph, based on the relevance of the decision for monetary policy tasks to the CCP and to ESMA.*

*Where any of the requirements set out in the first subparagraph are imposed by the central bank of issue after recognition has been granted to the CCP, the CCP shall comply immediately with these requirements in accordance with Article 25b and the central bank of issue shall immediately inform ESMA.*

*Requirements imposed by a central bank under point (iv) of the first subparagraph shall be imposed for a period of time not exceeding six months. Where the central bank considers that the exceptional situation referred to in point (iv) of the first subparagraph persists, it may, at the end of the first period, after consultation with the Commission and ESMA, continue to apply those requirements for an additional period not exceeding six months.*

*Any central bank of issue may submit to the Commission a duly justified request to add one or more requirements to the list set out in the first subparagraph.*

*On the basis of such request, the Commission may adopt a delegated act adding the requirements concerned to the list set out in the first subparagraph, or allowing the prolongation of the requirements imposed in accordance with point (iv) of that subparagraph.*

*Where, further to a request submitted by a central bank, the Commission decides not to add to the list set out in the first subparagraph one or more of the requirements that the central bank asked for in its request, it shall provide full and detailed reasons for its decision in writing to the central bank concerned;*

(c) the CCP has provided ESMA with *a written statement*, signed by *its* legal representative, *expressing the unconditional consent* of the CCP to *the provision*, within *10 working days* after service of a request by ESMA, *of any documents, records, information and data held by that CCP at the time the request is served* and *allowing* ESMA to access any of the CCP's business premises, *together with* a reasoned legal opinion by an independent legal expert confirming that the consent *expressed* is valid and enforceable under the relevant applicable laws;

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

*(da) cooperation arrangements have been established pursuant to paragraph 7a;*

(e) the Commission has not adopted an implementing act in accordance with paragraph 2c.

2c. ESMA, in agreement with the [ ] central banks of issue *of the most relevant Union currencies cleared or to be cleared by the third country CCP* [ ], 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 *a delegated act prohibiting the CCP concerned from being* recognised in accordance with *paragraphs 2 or 2b*.

*ESMA may, in its analysis, identify specific clearing services or activities that it considers shall only be provided to clearing members and trading venues established in the Union by a CCP authorised in accordance with Article 14.*

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

*(a) the elements referred to in points (a) to (da) of Article 25 (2a);*

*(b) the characteristics of the clearing services provided by the CCP, in particular the liquidity and physical settlement requirements associated with the provision of such services, and the related likelihood, in case of severe stress, of a need for the CCP to apply for central bank liquidity assistance;*

*(c) the presence of viable potential substitutes for the provision of the clearing services concerned in the currencies concerned to clearing members, their clients and indirect clients established in the Union;*

*(d) the existence and nature of liquidity support mechanisms available to the CCP in its home country and the existence of any other risk mitigating arrangements;*

*(e) the potential consequences of including the outstanding contracts held at the CCP within the scope of the delegated act;*

*(f) the potential consequences, in terms of costs and benefits, of the necessity for the CCP to apply for authorisation in the Union on the following:*

*(i) the CCP's clearing members and their clients and indirect clients established in the Union;*

*(ii) the CCP's linked and interoperable FMIs;*

*(iii) the financial stability of the Union or of one or more of its Member States, including whether systemic risk will be reduced as a result of the necessity for the CCP to apply for authorisation in the Union.*

*On the basis of the recommendation referred to in the first subparagraph and of its accompanying assessment, the Commission may adopt the delegated act referred to in the first subparagraph, which shall specify that some or all services provided by that CCP shall only be provided to clearing members and trading venues established in the Union only by a CCP authorised in accordance with Article 14, where applicable after an adaptation period. That delegated act may specify any of the following:*

*(a) an appropriate adaptation period for the CCP, its clearing members and their clients;*

*(b) the conditions under which that CCP may be temporarily recognised during the adaptation period referred to in point (a); and*

*(c) any measures that shall be taken during the adaptation period, in order to limit the potential costs to clearing members and their clients, in particular those established in the Union”*

*(ba) paragraph 3 is amended as follows:*

*(i) the introductory part is replaced by the following:*

*“3. When assessing whether the conditions referred to in paragraph 2 or 2a, as applicable, are met, ESMA shall consult:”*

*(ii) point (f) is replaced by the following:*

*“(f) the central banks of issue of all Union currencies of the financial instruments cleared or to be cleared by the third country CCP.”*

*(bb) in paragraph 4, subparagraph 6 is replaced by the following:*

"ESMA shall publish on its website a list of the CCPs recognised in accordance with this Regulation, *together with a mention of their categorisation as Tier 1 CCPs or Tier 2 CCPs.*"

(c) paragraph 5 is replaced by the following:

"5. ESMA shall, after consulting the authorities and entities referred to in paragraph 3, review the recognition of a CCP established in a third country *as follows:*

*(a) where the CCP concerned has extended the range of its activities and services in the Union; and, either:*

*(b) at least every two years, where the CCP concerned clears an amount of financial instruments denominated in Union currencies exceeding, for the currencies concerned, the thresholds set in the regulatory technical standards referred to in the fifth subparagraph; or*

*(c) at least every five years in all other cases.*

That review shall be conducted in accordance with paragraphs 2, 3 and 4.

*Further to this review, without prejudice to paragraph 2c and with due regard to the criteria set out in paragraph 1a, ESMA may either:*

*(a) determine, in accordance with paragraph 2a, that a Tier 1 CCP has become significant or likely to become significant for the financial stability of the Union or for one or more of its Member States, and shall therefore be reclassified as a Tier 2 CCP;*

*(b) determine that a Tier 2 CCP is no longer significant or likely to become significant for the financial stability of the Union or for one or more of its Member States, and shall therefore be reclassified as a Tier 1 CCP; or*

*(c) determine that the significance of the CCP concerned has remained unchanged and leave the classification of this CCP unchanged.*

*Where, further to the review referred to in the first subparagraph, ESMA determines that a third country CCP that ESMA had previously classified as a Tier 1 CCP shall be reclassified as a Tier 2 CCP, ESMA shall set an appropriate adaptation period, which shall not exceed 12 months, by the end of which the CCP shall comply with the requirements referred to in paragraph 2b.*

*ESMA may, upon the reasoned request of the CCP or of any competent authority of any of the CCP's clearing members established in the Union, extend that adaptation period by a maximum of 6 months, where such extension is justified by exceptional circumstances and the specific needs of the CCP's clearing members established in the Union.*

*5a. ESMA shall, in consultation with the members of the ESCB, develop draft regulatory technical standards specifying the threshold for each Union currency referred to in point (b) of the first subparagraph of paragraph 5 .*

*ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the 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.*”

(d) paragraph 6 is replaced by the following:

“6. The Commission shall adopt an implementing act under Article 5 of Regulation (EU) No 182/2011, determining the following:

(a) that the legal and supervisory arrangements of a third country ensure that CCPs authorised in that third country comply on an ongoing basis with legally binding requirements which are equivalent to the requirements laid down in Title IV of this Regulation;

(b) that those CCPs are subject to effective supervision and enforcement in that third country on an ongoing basis;

(c) that the legal framework of that third country provides for an effective equivalent system for the recognition of CCPs authorised under third-country legal regimes;

The Commission may subject the application of the implementing act referred to in the first subparagraph to the effective fulfilment of any requirement set out therein by a third country on an ongoing basis and to the ability by ESMA to effectively exercise its responsibilities in relation to third-country CCPs recognised under paragraphs 2 and 2b or in relation to monitoring referred to in paragraph 6b, including by way of agreeing and applying the cooperation arrangements referred to in paragraph 7.”

(e) the following paragraphs 6a and 6b are inserted:

“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.

6b. ESMA shall monitor the regulatory and supervisory developments in third countries for which implementing acts have been adopted pursuant to paragraph 6.

Where ESMA identifies any regulatory or supervisory development in those third countries that may impact the financial stability of the Union or for one or more of its Member States, it shall inform the Commission, **the European Parliament and the Council** confidentially and without delay.

ESMA shall submit a confidential report to the Commission on the regulatory and supervisory developments in the third countries referred to in the first subparagraph on an annual basis.”

(f) the first sentence of paragraph 7 is replaced by the following:

**“7. Where, following the assessment conducted in accordance with paragraph 2a, a CCP has been determined to be a Tier 1 CCP, ESMA shall establish effective cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6.”**

(g) in paragraph 7, the following point (e) is added:

**“(d) the procedures concerning the coordination of supervisory activities, including the agreement of third-country authorities to allow investigations and on-site inspections in accordance with Articles 25d and 25e respectively.**

**(e) the procedures necessary for the effective monitoring of regulatory and supervisory developments in *the* third country *concerned*.”**

(ga) in paragraph 7, the following point is added:

**“(f) procedures for cooperation in situations referred to in Article 24, including the following:**

**(i) the agreement of the relevant competent authorities of third countries to inform ESMA and the central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP without undue delay of any such situation relating to a CCP that those authorities supervise; and**

**(ii) the agreement of the relevant competent authorities of third countries to appropriately involve ESMA and the central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP in decisions taken in such situations.”**

(gb) in paragraph 7, the following subparagraph is added:

**“ESMA shall consult the central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP in the elaboration of those provisions of the cooperation arrangements that relate to matters referred to in point (f).”**

(gc) in Article 25, paragraphs 7a and 7b are inserted:

**“7a. Where, following the assessment conducted in accordance with paragraph 2a, a CCP has been determined to be a Tier 2 CCP, ESMA shall establish effective cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6. Such arrangements shall specify at least:**

**(a) the mechanism for the exchange of information between ESMA and the competent authorities of the third countries concerned, including access to all information requested by ESMA regarding CCPs authorised in those**

*third countries and the exchanges of information and reporting to be made in case of substantial changes to risk models and parameters, extension of CCP activities and services, changes in the client account structure and in the use of payment systems that substantially affect the Union;*

*(b) the mechanism for prompt notification to ESMA where a third country competent authority deems a third country CCP it supervises to be in breach of the conditions of its authorisation or of other law to which it is subject;*

*(c) the mechanism for prompt notification to ESMA by a third country competent authority where a CCP that it supervises has been granted the right to provide clearing services to clearing members or clients established in the Union;*

*(d) the procedures concerning the coordination of supervisory activities, including the agreement of third-country authorities to allow investigations and on-site inspections in accordance with Articles 25d and 25e respectively;*

*(e) the procedures necessary for the effective monitoring of regulatory and supervisory developments in the third country concerned;*

*(f) the express consent from the third country competent authorities to the sharing of any information they provide under point (a) to (d) with the authorities referred to in paragraph 3, subject to the professional secrecy requirements set out in Article 83;*

*(g) where rights on decisions are granted to ESMA in accordance with Article 25b, procedures concerning the effective enforcement of these rights;*

*(h) procedures for cooperation in situations referred to in Article 24, including the following:*

*(i) the agreement of the relevant competent authorities of third countries to inform ESMA and the central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP without undue delay of any such situation relating to a CCP that those authorities supervise;*

*(ii) the agreement of the relevant competent authorities of third countries to appropriately involve ESMA and the central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP in decisions taken in such situations.*

*ESMA shall consult the central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP in the elaboration of those provisions of the cooperation arrangements that relate to matters referred to in point (h).*

*7b. Where ESMA considers that a third country competent authority fails to apply any of the provisions laid down in a cooperation arrangement established in*

*accordance with paragraph 7 or 7a, it shall inform the Commission thereof confidentially and without delay. In such a case, the Commission may decide to review the implementing act adopted in accordance with paragraph 6.”*

10. The following Articles 25a, 25b, 25c, 25d, 25e, 25f, 25g, 25h, 25i, 25j, 25k, 25l, 25m, 25n are inserted:

“Article 25a  
Comparable compliance

1. A CCP referred to in Article 25(2b)(a) may submit a reasoned request that ESMA assesses *whether in its compliance with the applicable third country framework, it 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 .

*Based on the request received, ESMA shall undertake the assessment referred to in the first subparagraph. In carrying out that assessment, ESMA shall take into account the provisions of the implementing act adopted in accordance with Article 25(6).*

*Where, as a result of that assessment, ESMA concludes that the compliance of the CCP with the requirements referred to in Article 25(2b)(a) and set out in Article 16 and Titles IV and V is satisfied by the compliance of the CCP with the comparable requirements applicable in the third country, ESMA shall take that conclusion into account for the purposes of Article 25(2b)(a).*

2. The request referred to in paragraph 1 shall provide the factual basis for a finding of comparability and the reasons why compliance with the requirements applicable in the third country satisfies the requirements set out in Article 16 and Titles IV and V .

3. The Commission, in order to ensure that the assessment referred to in paragraph 1 effectively reflects the regulatory objectives of the requirements set out in Article 16 and Titles IV and V and the Union's interests as a whole, shall adopt a delegated act to specify the following:

- (a) the minimum elements to be assessed for the purposes of paragraph 1;
- (b) the modalities and conditions to carry out the assessment.

The Commission shall adopt the delegated act referred to in the first subparagraph in accordance with Article 82.

Article 25b  
Ongoing compliance with the conditions for recognition

1. ESMA shall be responsible for carrying out the duties resulting from this Regulation for the supervision on an ongoing basis of the compliance of recognised Tier 2 CCPs with the requirements referred to in Article 25(2b)(a).



ESMA shall require confirmation from each Tier 2 CCP at least on a yearly basis that the requirements referred to in points (a), (b), (c), (d) and (e) of Article 25(2b) continue to be fulfilled.

Where a central bank of issue referred to in Article 18(2)(h) considers that a Tier 2 CCP no longer fulfils the condition referred to in Article 25(2b)(b), it shall immediately notify ESMA.

***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 procedure set out in paragraphs 2 to 4 of Article 25m shall therefore be applied.***

***2. With regards to decisions pursuant to Articles 41, 44, 46, 50 and 54, the CCP Supervisory Committee shall consult each central banks of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP on those aspects of the draft decision which relate to the currency it issues.***

***Each central bank of issue shall respond to ESMA's request for consultation within 10 working days of transmission of the draft decision.***

***Where, having regards to Article 24, the CCP Supervisory Committee assesses that the situation encountered is an emergency situation, the period referred to in the previous subparagraph shall not exceed 24 hours.***

***Upon conclusion of the period for consulting the central banks of issue, the CCP Supervisory Committee shall make every effort to comply with the amendments proposed by them.***

***Where the CCP Supervisory Committee does not reflect in its draft decision to be submitted to the Board of Supervisors the amendments proposed by a central bank of issue, the CCP Supervisory Committee shall inform that central bank of issue in writing stating its full reasons and an explanation of any significant deviation from these amendments.***

***3. ESMA shall, in close cooperation with third country authorities, central banks of issue and the ESRB, carry out assessments of the resilience of recognised CCPs to adverse market developments in accordance with Article 32(2) of Regulation (EU) No 1095/2010. In carrying out those assessments, ESMA shall include at least financial, operational and cyber risks and ensure consistency with the assessments of the resilience of Union CCPs carried out pursuant to Article 21(6)(b) of this Regulation.***

#### **Article 25ba** **College for third country CCPs**

***1. ESMA shall establish a college for third country CCPs to facilitate the sharing of information.***

**2. The college shall consist of:**

- (a) the permanent members of the CCP Supervisory Committee;**
- (b) the competent authorities responsible for supervision of CCPs designated by the Member States pursuant to Article 22;**
- (c) the competent authorities responsible for the supervision of the clearing members of any third country CCP recognised in accordance with Article 25 established in the Union;**
- (d) the competent authorities responsible for the supervision of trading venues established in the Union, served or to be served by any third country CCP recognised in accordance with Article 25;**
- (e) the competent authorities supervising central securities depositories established in the Union to which any third country CCP recognised in accordance with Article 25 is linked or intends to be linked; and**
- (f) the members of the ESCB.**

**3. The college may request the CCP Supervisory Committee to discuss specific matters in relation to a CCP established in a third country. The CCP Supervisory Committee shall duly consider such requests and provide an appropriate response.**

**4. The Chair of the CCP Supervisory Committee shall chair the college. The establishment and functioning of the college shall be based on a written agreement between all its members.**

**Article 25bb**

**Exercise of the powers referred to in Articles 25c to 25e**

**The powers conferred on ESMA or any official of or other person authorised by them by Articles 25c to 25e shall not be used to require the disclosure of information or documents which are subject to legal privilege.**

**Article 25c**

**Request for information**

1. ESMA may by simple request or by decision require recognised CCPs and related third parties to whom those CCPs have outsourced operational functions or activities to provide all necessary information to enable ESMA to carry out its duties under this Regulation.

2. When sending a simple request for information under paragraph 1, ESMA shall indicate all of the following:

- (a) the reference to this Article as the legal basis of the request;
- (b) the purpose of the request;

- (c) the information required;
- (d) the time limit to provide the information;
- (e) inform the person from whom the information is requested that there is no obligation to provide the information but that in case of a voluntary reply to the request the information provided must not be incorrect or misleading;
- (f) the fine provided for in Article 25g in conjunction with point (a) of Section V of Annex III, where the answers to questions asked are incorrect or misleading.

3. When requiring that information is provided under paragraph 1 by decision, ESMA shall indicate all of the following:

- (a) the reference to this Article as the legal basis of the request;
- (b) the purpose of the request;
- (c) the information required;
- (d) the time limit to provide the information;
- (e) the periodic penalty payments provided for in Article 25h where the production of the required information is incomplete;
- (f) the fine provided for in Article 25g in conjunction with point (a) of Section V of Annex III, where the answers to questions asked are incorrect or misleading; and
- (g) the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.

4. The persons referred to in paragraph 1 or their representatives and, in case of persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. ESMA shall, without delay, send a copy of the simple request or of its decision to the relevant third-country competent authority where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

#### Article 25d General investigations

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:

(a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;

(b) take or obtain certified copies of or extracts from such records, data, procedures and other material;

(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;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

(e) request records of telephone and data traffic.

***The central banks of issue of the most relevant Union currencies cleared or to be cleared by the CCP may submit a justified request to ESMA to participate in such investigations where those investigations are relevant for the carrying-out of the monetary policy tasks set out in Article 25(2b)(b).***

2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 25h where the production of the required records, data, procedures or any other material, or the answers to questions asked to Tier 2 CCPs are not provided or are incomplete, and the fines provided for in Article 25g in conjunction with point (b) of Section V of Annex III, where the answers to questions asked to Tier 2 CCPs are incorrect or misleading.

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.

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.

Article 25e  
On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct, *where* necessary, on-site inspections at any business premises *or property* of Tier 2 CCPs. The central *banks* of issue *of the most relevant Union currencies cleared or to be cleared by the CCP* shall be invited to participate in such on-site inspections *where those inspections relate to the monetary policy tasks set out in Article 25(2b)(b)*.

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises or land of the legal persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 25d(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.

3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the relevant third-country competent authority where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant third-country competent authority, may carry out the on-site inspection without prior notice to the CCP. Inspections in accordance with this Article shall be conducted provided that the relevant third-country authority has confirmed that it does not object to those inspections.

The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 25h where the persons concerned do not submit to the inspection.

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.

5. Officials of, as well as those authorised or appointed by, the competent authority of the third country where the inspection is to be conducted *may* actively assist the officials and other persons authorised by ESMA. Officials of the *relevant* third-country competent authority *shall be invited to* attend the on-site inspections.

6. ESMA may also request third-country competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 25d(1) on its behalf.

7. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the third-country competent authority concerned may afford them the necessary assistance, requesting,

where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

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#### Article 25f

##### Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex III, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the recognition or supervision process of the CCP concerned and shall perform his functions independently from ESMA.

2. The investigation officer shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA.

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 **25bb**.

Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its activities.

3. Upon completion of his investigation and before submitting the file with his findings to ESMA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.

The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.

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*.

5. On the basis of the file containing the investigation officer's findings and, when requested by the persons concerned, after having heard the persons subject to the investigations in accordance with Article 25i, ESMA shall decide if one or more of the infringements listed in Annex III has been committed by the persons who have been subject to the investigations and, in such a case, shall take a supervisory

measure in accordance with Article 25n and impose a fine in accordance with Article 25g.

6. The investigation officer shall not participate in ESMA's deliberations or in any other way intervene in ESMA's decision-making process.

7. The Commission shall adopt delegated acts in accordance with Article 82 to specify further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of penalties.

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 *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.

#### Article 25g

##### Fines

1. 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.

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.

2. The basic amounts of the fines referred to in paragraph 1 shall be up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10 % of the total annual turnover, as defined in relevant Union law, of a legal person in the preceding business year.

3. The basic amounts set out in paragraph 2 shall be adjusted, if need be, by taking into account aggravating or mitigating factors in accordance with the relevant coefficients set out in Annex IV.

The relevant aggravating coefficients shall be applied one by one to the basic amount. If more than one aggravating coefficient is applicable, the difference between the basic amount and the amount resulting from the application of each individual aggravating coefficient shall be added to the basic amount.

The relevant mitigating coefficients shall be applied one by one to the basic amount. If more than one mitigating coefficient is applicable, the difference between the basic

amount and the amount resulting from the application of each individual mitigating coefficient shall be subtracted from the basic amount.

4. Notwithstanding paragraphs 2 and 3, the amount of the fine shall not exceed 20 % of the annual turnover of the CCP concerned in the preceding business year but, where the CCP has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit.

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.

#### Article 25h Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a Tier 2 CCP to put an end to an infringement in accordance with a decision taken pursuant to Article 25n(1)(a);

(b) a person referred to in Article 25c(1) to supply complete information which has been requested by a decision pursuant to Article 25c;

(c) a Tier 2 CCP:

(i) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 25d; or

(ii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 25e.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

#### Article 25i Hearing of the persons concerned



1. Before taking any decision on a fine or periodic penalty payment under Articles 25g and 25h, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.

***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.***

2. The rights of the defence of the persons subject to the proceedings shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's 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.

#### Article 25j

#### Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 25g and 25h unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EC) No 45/2001.

2. Fines and periodic penalty payments imposed pursuant to Articles 25g and 25h shall be of an administrative nature.

3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the relevant third-country competent authorities accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 25g and 25h shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State or third-country in which it is carried out.

5. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

#### Article 25k

#### Review by the Court of Justice

The Court of Justice shall have jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 25l  
Amendments to Annex IV

In order to take account of developments on financial markets the Commission shall be empowered to adopt delegated acts in accordance with Article 82 concerning measures to amend Annex IV.

Article 25m  
Withdrawal of recognition

1. Without prejudice to Article 25n, and subject to the following paragraphs, ESMA shall withdraw a recognition decision adopted in accordance with Article 25 where **■** :

(a) *the CCP concerned* does not make use of the recognition within 6 months, expressly renounces the authorisation or has ceased to engage in business for more than six month;

(b) *the CCP concerned* has obtained the recognition through false statements or by any other irregular means;

(c) *the CCP concerned* no longer meets the conditions for recognition pursuant to Article 25(2b);

*(ca) ESMA is unable to exercise effectively its responsibilities under this Regulation over the CCP concerned, due to the failure of the third country authority of the CCP to provide ESMA with all relevant information in accordance with Article 25(7) or Article 25(7a), as applicable.*

(d) the implementing act referred to in Article 25(6) has been withdrawn or suspended, or any of the conditions attached to it is no longer satisfied.

ESMA may limit the withdrawal of the recognition to a particular service, activity or class of financial instruments.

When determining the date of entry into effect of the decision to withdraw the recognition ESMA shall endeavor to minimise market disruption

2. Where ESMA considers that the criterion referred to in point (c) of the first paragraph is fulfilled in relation to a CCP *or a particular service, activity or class of financial instruments thereof*, ESMA shall inform that CCP and the relevant third-country authorities prior to withdrawing a recognition decision, and request that appropriate action is taken within a set timeframe of up to a maximum of 3 months to remedy the situation.

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.

3. ESMA shall, without undue delay, notify the relevant third-country competent authority of a decision to withdraw the recognition of a recognised CCP.
4. Any of the authorities referred to in *points (a) to (e) of Article 25(3) and any central bank of issue of the most relevant Union currencies cleared or to be cleared by the third country CCP* which consider that one of the conditions referred to in paragraph 1 has been met may request ESMA to examine whether the conditions for the withdrawal of recognition of a recognised CCP *or a particular service, activity or class of financial instrument thereof* are met. Where ESMA decides not to withdraw the registration of the recognised CCP concerned, it shall provide full reasons to the requesting authority.

Article 25n  
Supervisory measures

1. Where, in accordance with Article 25f(5), ESMA finds that a Tier 2 CCP has committed one of the infringements listed in Annex III, it shall take one or more of the following decisions:
  - (a) require the CCP to bring the infringement to an end;
  - (b) impose fines under Article 25g;
  - (c) issue public notices;
  - (d) withdraw the recognition of a CCP, *or of a particular service, activity or class of financial instruments thereof*, under Article 25m.
2. When taking the decisions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:
  - (a) the duration and frequency of the infringement;
  - (b) whether the infringement has revealed serious or systemic weaknesses in the CCP's procedures or in its management systems or internal controls;
  - (c) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;
  - (d) whether the infringement has been committed intentionally or negligently.
3. Without undue delay, ESMA shall notify any decision adopted pursuant to paragraph 1 to the CCP concerned, and shall communicate it to the relevant third-country competent authorities and the Commission. It shall publicly disclose any such decision on its website within 10 working days from the date when it was adopted.

When making public its decision as referred to in the first subparagraph, ESMA shall also make public the right of the CCP concerned to appeal the decision, the fact,

where relevant, that such an appeal has been lodged, specifying that such an appeal does not have suspensive effect, and the fact that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.”

11. Article 49 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall obtain independent validation, shall inform its competent authority and ESMA of the results of the tests performed and shall obtain *their* validation of the competent authority in accordance with paragraphs (1a) *and Article 21a* before adopting any significant change to the models and parameters.

The adopted models and parameters, including any significant change thereto, shall be subject to an opinion of the college in accordance with the following paragraphs.

ESMA shall ensure that information on the results of the stress tests is passed on to the ESAs, the ESCB and the Single Resolution Board to enable them to assess the exposure of financial undertakings to the default of CCPs.”

(b) The following paragraphs 1a, 1b, 1c, 1d, 1e and 1f are added:

“1a. Where a CCP intends to adopt any significant change to the models and parameters referred to in paragraph 1, it shall apply to the competent authority for validation of that change. The CCP shall enclose an independent validation of the intended change to its application.

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.

1c. Within 15 working days of the receipt of the report referred to in paragraph 1b, the college shall adopt a majority opinion in accordance with Article 19(3).

1d. Within 60 working days of the receipt of the application referred to in paragraph 1a, the competent authority shall inform the CCP in writing, with a fully reasoned explanation, whether the validation has been granted or refused.

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 models or parameters prior to its validation where duly justified.

(ba) *the following paragraph 4a is inserted:*

***“4a. In order to ensure uniform conditions of application of this article, ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards establishing a list of indicators to be considered by CCPs, ESMA and national competent authorities when assessing whether a change to the models and parameters referred to in paragraph 1 is significant and requires a validation from ESMA and the competent authority.***

***ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months following the 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.”***

11a. *In Article 84, paragraph 3a is inserted:*

***"3a. Competent authorities and ESMA shall communicate information to central banks of issue where such information is relevant for the exercise of their duties and subject to the professional secrecy requirements set out in Article 83."***

12. In Article 89, the following paragraphs are added:

***“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]***

***3b. ESMA shall **examine** the recognition decisions **which have been** adopted pursuant to Article 25(1) before [entry into force of this **amending** Regulation] **in order to determine whether each of the CCPs recognised under those decisions is a Tier 1 CCP or a Tier 2 CCP. ESMA shall proceed to the assignment of recognised CCPs to a category** within 18 months from the entry into force of the delegated act referred to in the second subparagraph of Article 25(2a)."***

12a. *In Article 89, paragraph 9a is added:*

***"By ... [three years after the entry into force of this amending Regulation], the Commission shall review the implementation of Titles III, IV and V of this Regulation relating to the authorisation, recognition and supervision of CCPs. It shall assess the transfer of more tasks to ESMA in particular the functioning and efficiency of the role conferred on ESMA and the supervisory colleges in Titles III, IV and V. The Commission shall submit a report thereon to the European Parliament and to the Council. Where appropriate, that report shall be accompanied by a legislative proposal."***

12b. *Article 90 is replaced by the following:*

Article 90  
Staff and resources of ESMA

*“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.”*

13. The texts set out in the Annex to this Regulation are added as Annexes III and IV.

### Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament  
The President

For the Council  
The President

## ANNEX

The following are added as Annexes III and IV to Regulation (EU) No 648/2012.

### “ANNEX III

#### List of infringements referred to in Article 25g(1)

#### I. Infringements relating to capital requirements:

(a) a Tier 2 CCP infringes Article 16(1) by not having a permanent and available initial capital of at least EUR 7.5 million;

(b) a Tier 2 CCP infringes Article 16(2) by not having capital, including retained earnings and reserves, which is proportionate to the risk stemming from its activities and at all times sufficient to ensure an orderly winding-down or restructuring of that activities over an appropriate time span and an adequate protection of the CCP against credit, counterparty, market, operational, legal and business risks which are not already covered by specific financial resources as referred to in Articles 41, 42, 43 and 44.

#### II. Infringements relating to organisational requirements or conflicts of interest:

(a) a Tier 2 CCP infringes Article 26(1) by not having robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures;

(b) a Tier 2 CCP infringes Article 26(2) by not adopting adequate policies and procedures which are sufficiently effective to ensure compliance, including that of its managers and employees, with all the provisions of this Regulation;

(c) a Tier 2 CCP infringes Article 26(3) by not maintaining or operating an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities or by not employing appropriate and proportionate systems, resources or procedures;

(d) a Tier 2 CCP infringes Article 26(4) by not maintaining a clear separation between the reporting lines for risk management and those for other operations of the CCP;

(e) a Tier 2 CCP infringes Article 26(5) by not adopting, implementing or maintaining a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards;

(f) a Tier 2 CCP infringes Article 26(6) by not maintaining information technology systems adequate to deal with the complexity, variety and type of services and activities performed to ensure high standards of security and the integrity and confidentiality of the information maintained;

- (g) a Tier 2 CCP infringes Article 26(7) by not making its governance arrangements, the rules governing the CCP, and its admission criteria for clearing membership available publicly free of charge;
- (h) a Tier 2 CCP infringes Article 26(8) by not being subject to frequent and independent audits or by not communicating the results of those audits to the board or by not making those results available to ESMA;
- (i) a Tier 2 CCP infringes Article 27(1) or the second subparagraph of Article 27(2) by not ensuring that its senior management and the members of the board are of sufficiently good repute and experience to ensure the sound and prudent management of the CCP;
- (j) a Tier 2 CCP infringes Article 27(2) by not ensuring that at least one third, but no less than two, of the members of that board shall be independent or by not inviting the representatives of the clients of clearing members to board meetings for matters relevant to Articles 38 and 39 or by linking the compensation of the independent and other non-executive members of the board to the business performance of the CCP;
- (k) a Tier 2 CCP infringes Article 27(3) by not clearly determining the roles and responsibilities of the board or by not making the minutes of the board meeting available to ESMA or the auditors;
- (l) a Tier 2 CCP infringes Article 28(1) by not establishing a risk committee or by not composing that risk committee of representatives of its clearing members, independent members of the board and representatives of its clients, by composing the risk committee in a way that one of these groups of representatives has a majority in the risk committee, or by not duly informing ESMA of the activities and decisions of the risk committee where ESMA has requested to be duly informed;
- (m) a Tier 2 CCP infringes Article 28(2) by not clearly determining the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria or the election mechanism of risk committee members or by not making those governance arrangements publicly available or by not determining that the risk committee is chaired by an independent member of the board and reports directly to the board and holds regular meetings;
- (n) a Tier 2 CCP infringes Article 28(3) by not allowing the risk committee to advise the board on any arrangements that may impact the risk management of the CCP or by not making reasonable efforts to consult the risk committee on developments impacting the risk management of the CCP in emergency situations;
- (o) a Tier 2 CCP infringes Article 28(5) by not promptly informing ESMA of any decision in which the board decides not to follow the advice of the risk committee;



- (p) a Tier 2 CCP infringes Article 29(1) by not maintaining all the records on the services and activity provided by that CCP for a period of at least ten years, which are required to enable ESMA to monitor the CCP's compliance with this Regulation;
- (q) a Tier 2 CCP infringes Article 29(2) by not maintaining, for a period of at least ten years following the termination of a contract, all information on all contracts it has processed in a way that enables the identification of the original terms of a transaction before clearing by that CCP;
- (r) a Tier 2 CCP infringes Article 29(3) by not making the records and information referred to in paragraphs 1 and 2 of Article 29, or all information on the positions of cleared contracts, irrespective of the venue where the transactions were executed, available upon request to ESMA and the relevant members of the ESCB;
- (s) a Tier 2 CCP infringes Article 30(1) by not, or by falsely or incompletely, informing ESMA of the identities of its shareholders or members, whether direct or indirect, national or legal, persons that have qualifying holdings or of the amounts of those holdings;
- (t) a Tier 2 CCP infringes Article 30(4) by allowing the persons referred to in Article 30(1) exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP;
- (u) a Tier 2 CCP infringes Article 31(1) by not, or by falsely or by incompletely, notifying ESMA of any change to its management or not providing ESMA with all information necessary to assess compliance with Article 27(1) or the second subparagraph of Article 27(2);
- (v) a Tier 2 CCP infringes Article 33(1) by not maintaining or operating effective written organisational and administrative arrangements to identify or manage any potential conflict of interest between itself, including its managers, employees or any person with direct or indirect control or close links, and its clearing members or their clients known to the CCP or by not maintaining or implementing adequate procedures aiming at resolving possible conflicts of interest;
- (w) a Tier 2 CCP infringes Article 33(2) by not clearly disclosing the general nature or sources of conflicts of interest, before accepting new transactions from the clearing member concerned, to the clearing member or to a concerned client of that clearing member who is known to the CCP where the organisational or administrative arrangements of that CCP to manage a conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interest of a clearing member or client are prevented;
- (x) a Tier 2 CCP infringes Article 33(3) by not taking into account in its written arrangements any circumstances, of which it is or should be aware, which may give rise to a conflict of interest arising as a result of the structure

and business activities of other undertakings with which it has a parent undertaking or a subsidiary relationship;

(y) a Tier 2 CCP infringes Article 33(5) by not taking all reasonable steps to prevent any misuse of the information held in its systems or preventing the use of that information for other business activities, or by a natural person who has a close link to a CCP or a legal person that has a parent undertaking or a subsidiary relationship with the CCP using confidential information recorded in that CCP for any commercial purposes without the prior consent of the client to whom such confidential information belongs;

(z) a Tier 2 CCP infringes Article 36(1) by not acting fairly and professionally in accordance with the best interests of its clearing members and their clients;

(aa) a Tier 2 CCP infringes Article 36(2) by not having accessible, transparent and fair rules for the prompt handling of complaints;

(bb) a Tier 2 CCP infringes Article 37(1) or (2) by using, on an ongoing basis, discriminatory, opaque or subjective admission criteria, or by otherwise failing to ensure fair and open access to that CCP on an ongoing basis or by failing to ensure on an ongoing basis that its clearing members have sufficient financial resources and operational capacity to meet the obligations arising from the participation in that CCP, or by failing to conduct a comprehensive review of compliance by its clearing members on an annual basis;

(cc) a Tier 2 CCP infringes Article 37(4) by failing to have objective and transparent procedures for the suspension and the orderly exit of clearing members that no longer meet the criteria referred to in Article 37(1);

(dd) a Tier 2 CCP infringes Article 37(5) by denying access to a clearing member meeting the criteria referred to in Article 37(1) where such denial of access is not duly justified in writing and based on a comprehensive risk analysis;

(ee) a Tier 2 CCP infringes Article 38(1) by not allowing the clients of its clearing members separate access to the specific services provided;

(ff) a Tier 2 CCP infringes Article 39(7) by not offering the different levels of segregation referred to in that paragraph on reasonable commercial terms;

### III. Infringements relating to operational requirements:

(a) a Tier 2 CCP infringes Article 34(1) by not establishing, implementing or maintaining an adequate business continuity policy and disaster recovery plan aimed at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the CCP's obligations, which at least allows for the recovery of all transactions at the time of disruption to allow the CCP to

continue to operate with certainty and to complete settlement on the scheduled date;

(b) a Tier 2 CCP infringes Article 34(2) by not establishing, implementing or maintaining an adequate procedure aimed at ensuring the timely and orderly settlement or transfer of the assets and positions of clients and clearing members in the event of withdrawal of recognition pursuant to a decision under Article 25;

(c) a Tier 2 CCP infringes the second subparagraph of Article 35(1) by outsourcing major activities linked to the risk management of that CCP;

(d) a Tier 2 CCP infringes Article 39(1) by not keeping separate records and accounts that enable it, at any time and without delay, to distinguish in accounts with the CCP the assets and positions held for the account of one clearing member from the assets and positions held for the account of any other clearing member and from its own assets;

(e) a Tier 2 CCP infringes Article 39(2) by not offering to keep and not keeping where so requested separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions of that clearing member from those held for the account of its clearing members;

(f) a Tier 2 CCP infringes Article 39(3) by not offering to keep and not keeping where so requested separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients, or by not offering its clearing members the possibility to open more accounts in their own name for the account of their clients where so requested;

(g) a Tier 2 CCP infringes Article 40 by not measuring and assessing its liquidity and credit exposures to each clearing member and, where relevant, to another CCP with which it has concluded an interoperability arrangement on a near to real-time basis or by not having access to the relevant pricing sources to effectively measure its exposures on a reasonable cost basis;

(h) a Tier 2 CCP infringes Article 41(1) by not imposing, calling or collecting margins to limit its credit exposures from its clearing members or, where relevant, from CCPs with which it has concluded an interoperability arrangement, or by imposing, calling or collecting margins which are not sufficient to cover potential exposures that the CCP estimates to occur until the liquidation of the relevant positions or to cover losses that result at least 99% of the exposures movements over an appropriate time horizon or sufficient to ensure that the CCP fully collateralises its exposures with all its clearing members and, where relevant, with all CCPs with which it has concluded an interoperability arrangement, at least on a daily basis, or, if necessary, to take into account any potentially procyclical effects;

(i) a Tier 2 CCP infringes Article 41(2) by failing to adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared taking into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction;

(j) a Tier 2 CCP infringes Article 41(3) by not calling and collecting margins on an intraday basis, at least when predefined thresholds are exceeded;

(k) a Tier 2 CCP infringes Article 42(3) by not maintaining a default fund which at least enables it to withstand, under extreme but plausible market conditions, the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members if the sum of their exposures are larger, or by developing scenarios that do not include the most volatile periods that have been experienced by the markets for which the CCP provides its services and a range of potential future scenarios, which take into account sudden sales of financial resources and rapid reductions in market liquidity;

(l) a Tier 2 CCP infringes Article 43(2) where its default fund referred to in Article 42 and its other financial resources referred to in Article 43(1) do not enable it to withstand the default of the two clearing members to which it has the largest exposures under extreme but plausible market conditions;

(m) a Tier 2 CCP infringes Article 44(1) by not having access at all times to adequate liquidity to perform its services and activities or by not measuring on a daily basis its potential liquidity needs;

(o) a Tier 2 CCP infringes Article 45(1), (2) and (3) by not using the margins posted by a defaulting clearing member prior to other financial resources in covering losses;

(p) a Tier 2 CCP infringes Article 45(4) by not using dedicated own resources before using the default fund contributions of non-defaulting clearing members;

(q) a Tier 2 CCP infringes Article 46(1) by accepting anything other than highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members where other collateral is not allowed under the delegated act adopted by the Commission under Article 46(3);

(r) a Tier 2 CCP infringes Article 47(1) by investing its financial resources other than in cash or highly liquid financial instruments with minimum market and credit risk and capable of being liquidated rapidly with minimal adverse price effect;

(s) a Tier 2 CCP infringes Article 47(3) by not depositing financial instruments posted as margins or as default fund contributions with operators of securities settlement systems that ensure the full protection of those financial instruments

where these are available or by not using other highly secure arrangements with authorised financial institutions;

(t) a Tier 2 CCP infringes Article 47(4) by performing cash deposits other than through highly secure arrangements with authorised financial institutions or through the use of standing deposit facilities of central banks or other comparable means provided by central banks;

(u) a Tier 2 CCP infringes Article 47(5) by depositing assets with a third party without ensuring that the assets belonging to the clearing members are identifiable separately from the assets belonging to the CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection or by not having prompt access to the financial instruments when required;

(v) a Tier 2 CCP infringes Article 47(6) by investing its capital or the sums arising from the requirements laid down in Articles 41, 42, 43 or 44 in its own securities or those of its parent undertaking or its subsidiary;

(w) a Tier 2 CCP infringes Article 48(1) by not having detailed procedures in place to be followed where a clearing member does not comply with the participation requirements laid down in Article 37 within the time limit and in accordance with the procedures established by the CCP, or by not setting out in detail the procedures to be followed in the event the default of a clearing member is not declared by the CCP, or by not reviewing those procedures annually;

(x) a Tier 2 CCP infringes Article 48(2) by failing to take prompt action to contain losses and liquidity pressures resulting from clearing member defaults and to ensure that the closing out of any clearing member's positions does not disrupt its operations or expose the non-defaulting clearing members to losses they cannot anticipate or control;

(y) a Tier 2 CCP infringes Article 48(3) by failing to promptly inform ESMA before the default procedure is declared or triggered;

(z) a Tier 2 CCP infringes Article 48(4) by not verifying that its default procedures are enforceable and not taking all reasonable steps to ensure that it has the legal powers to liquidate the proprietary positions of the defaulting clearing member and to transfer or liquidate the clients' positions of the defaulting clearing member;

(aa) a Tier 2 CCP infringes Article 49(1) by not regularly reviewing its models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements or other risk control mechanisms, and by not subjecting those models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions or performing back tests to assess the reliability of the methodology adopted, or by failing to obtain independent validation, or by failing to inform ESMA of the results of the tests

performed or obtaining ESMA's validation before adopting any significant change to the models and parameters;

(bb) a Tier 2 CCP infringes Article 49(2) by not regularly testing the key aspects of its default procedures or by failing to take all reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event;

(cc) a Tier 2 CCP infringes Article 49(1a) by adopting any significant change to the models and parameters referred to in Article 49(1) before obtaining ESMA's validation of that change;

(dd) a Tier 2 CCP infringes Article 50(1) by not using, where practical and available, central bank money to settle its transactions or by not taking steps to strictly limit cash settlement risks where central bank money is not used;

(ee) a Tier 2 CCP infringes Article 50(3) by not eliminating principal risks through the use of delivery-versus-payment mechanisms to the extent possible, where that CCP has an obligation to make or receive deliveries of financial instruments;

(ff) a Tier 2 CCP infringes Article 50a or Article 50b by not calculating  $K_{CCP}$  as specified in that Article or by not following the rules for the calculation of  $K_{CCP}$  set out in Articles 50a(2), 50b and 50d;

(gg) a Tier 2 CCP infringes Article 50a(3) by calculating  $K_{CCP}$  less than quarterly or less frequently than required by ESMA in accordance with Article 50a(3);

(hh) a Tier 2 CCP infringes Article 51(2) by not having non-discriminatory access both to the data that it needs for the performance of its functions from a trading venue to the extent that the CCP complies with the operational and technical requirements established by that trading venue and to the relevant settlement system;

(ii) a Tier 2 CCP infringes Article 52(1) by entering into an interoperability arrangement without fulfilling any of the requirements set out in point (a), point (b), point (c) and point (d) of that paragraph;

(jj) a Tier 2 CCP infringes Article 53(1) by not distinguishing in accounts the assets and positions held for the account of another CCP with whom it has entered into an interoperability arrangement;

(kk) a Tier 2 CCP infringes Article 54(1) by entering an interoperability arrangement without the prior approval of ESMA;

#### IV. Infringements relating to transparency and the availability of information:

- (a) a Tier 2 CCP infringes Article 38(1) by not publicly disclosing the prices and fees of each service provided separately including discounts and rebates and the conditions to benefit from those reductions;
- (b) a Tier 2 CCP infringes Article 38(1) by not disclosing the information on costs and revenues of its services to ESMA;
- (c) a Tier 2 CCP infringes Article 38(2) by not disclosing to its clearing members and their clients the risks associated with the services provided;
- (d) a Tier 2 CCP infringes Article 38(3) by not disclosing to its clearing members or ESMA the price information used to calculate its end-of-day exposures to its clearing members or by not publicly disclosing the volume of cleared transactions for each instrument cleared by the CCP on an aggregated basis;
- (f) a Tier 2 CCP infringes Article 38(4) by not publicly disclosing the operational and technical requirements relating to the communication protocols covering content and message formats it uses to interact with third parties including the operational and technical requirements referred to in Article 7;
- (g) a Tier 2 CCP infringes Article 38(5) by not publicly disclosing any breaches by clearing members of the criteria referred to in Article 37(1) or the requirements laid down in Article 38(5) except where ESMA considered that such a disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved;
- (h) a Tier 2 CCP infringes Article 39(7) by not publicly disclosing the levels of protection and the costs associated with the different levels of segregation that it provides;
- (i) a Tier 2 CCP infringes Article 49(3) by not publicly disclosing key aspects on its risk management model or assumptions adopted to perform the stress test referred to in Article 49(1);
- (j) a Tier 2 CCP infringes Article 50(2) by not clearly stating its obligations with respect to deliveries of financial instruments, including whether it has an obligation to make or receive delivery of a financial instrument or whether it indemnifies participants for losses incurred in the delivery process.
- (k) a Tier 2 CCP infringes Article 50c(1) by not reporting the information referred in points (a), (b), (c), (d) and (e) of Article 50c(1) to those of its clearing members which are institutions or to their competent authorities;
- (l) a Tier 2 CCP infringes Article 50c(2) by notifying those of its clearing members which are institutions less than quarterly or less frequently than required by ESMA in accordance with Article 50c(2).

V. Infringements relating to obstacles to the supervisory activities:

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

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

(c) a Tier 2 CCP does not comply in due time with a supervisory measure required by a decision adopted by ESMA pursuant to Article 25n;

(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.”

1. The following Annex IV is inserted:

“ANNEX IV

List of the coefficients linked to aggravating and mitigating factors for the application of Article 25g(3)

The following coefficients shall be applicable, cumulatively, to the basic amounts referred to in Article 25g(2):

- I. Adjustment coefficients linked to aggravating factors:

(a) if the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1.1 shall apply;

(b) if the infringement has been committed for more than six months, a coefficient of 1.5 shall apply;

(c) if the infringement has revealed systemic weaknesses in the organisation of the CCP, in particular in its procedures, management systems or internal controls, a coefficient of 2.2 shall apply;

(d) if the infringement has a negative impact on the quality of the activities and services of the CCP, a coefficient of 1.5 shall apply;

(e) if the infringement has been committed intentionally, a coefficient of 2 shall apply;

(f) if no remedial action has been taken since the breach has been identified, a coefficient of 1.7 shall apply;



(g) if the CCP's senior management has not cooperated with ESMA in carrying out its investigations, a coefficient of 1.5 shall apply.

II. Adjustment coefficients linked to mitigating factors:

(a) if the infringement has been committed for less than 10 working days, a coefficient of 0.9 shall apply;

(b) if the CCP's senior management can demonstrate to have taken all the necessary measures to prevent the infringement, a coefficient of 0.7 shall apply;

(c) if the CCP has brought quickly, effectively and completely the infringement to ESMA's attention, a coefficient of 0.4 shall apply;

(d) if the CCP has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future, a coefficient of 0.6 shall apply."

## ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report:

Entity and/or person
American Chamber of Commerce : Financial services committee members
Association Française de gestion: Virginie Buey, Virginie Gaborit, Pierre Garrault, Jean-Louis Laurens
Association for Financial Markets in Europe : Stephen Burton, Michael Cole-Fontayn
Autorité des Marchés Financiers : Patrice Aguesse, Claire Guillaumot, Isabelle Massonat
Bank of England: David Bailey, Barry King, Zertasha Malik, Holly Snaith, Richard Spooner
Banque de France: Emmanuelle Assouan, Claudine Hurman, Ivan Odonnat, Francois Villeroy de Galhau,
Blackrock : Stephen Fisher, Carey Evans
Brunswick Group: Michael Feuerstein
CEPS: Karel Lannoo
Chicago Mercantile Exchange (CME) : Sunil Cutinho, Sean Downey, Emily Hendrix, Simon Turek
City Bank: Slawomir Sikora
City UK: John Mac Farlane
City of London: Jeremy Browne
Commerzbank: Martin Zielke
The Depository Trust and Clearing Corporation (DTCC): Ann Schuman, Michalis Sotiropoulos, Mark Wetjen
Deutsche Bank: Jürgen Feil, Arthur Marquis, Nina Schindler, Katharina Wolf
Deutsche Börse: Niels Brab, Claire Bravard Alexandra Hachmeister
Eurex: Thomas Book, Niels Brab, Matthias Graulich, Erik Müller

European Association of Public Banks: Filip Chraska, Thorsten Guthke
European Association of CCP Clearing Houses: Chiara Bergamaschi, Rafael Plata
European Central Bank: Marguerite Connell, Benoit Coeure, Stephanie.Bergbauer, Corinna Freund, Jean-Francois Jamet, Pierre Marmara, Yves Mersch, Panagiotis Papapaschalis, Clement Rouveyrol
European Securities Markets Authority: Giampiero Carla , Steven Maijoor, Jakub Michalik, Maud Thimon
Federation of European Securities Exchange: Richard Fenner
French Banking Federation: Taha Bousmaha, Philippe de Soumagnat, Benjamin Quatre
German fund managers association (BVI) : Felix Ertl, Rudolf Siebel
Intercontinental Exchange (ICE) : Nicolas Kügler, Finbarr Hutcheson
KPDW CCP: Slawomir Panasiuk, Marcin Truchanowicz, Karolina Ziolkowska
London Clearing House (LCH): Julien Jardelot, Daniel Maguire, Corentine Poilvet-Clediere, Nikhil Rathi
Luxembourg Bankers' association and Luxembourg Fund industry association: Marc-André Bechet, Antoine Kremer, Gilles Pierre
FIA: Walt Lukken, Jackie Mesa, Corinna Schempp, Simon Puleston Jones
International Swaps and Derivatives Association (ISDA): Roger Cogan, Ulrich Karl
International Regulatory Strategy Group: Mark Hoban
Moody's: Nigel Phipps
Japan Center for International Finance: Jutaro Kaneko
NASDAQ: Erica Brown, Julia Haglind, Hans-Ole Jochumsen,

Nomura Bank: Yuji Nakata
SIX-clear : Matthias Heer, Urs Wieland
State of Hessen: Mark Weinmeister, Robert Möhrle
Union Investment: Andreas Illenseer
US Commodities Futures Trading Commission: John Behnam, Chris Giancarlo, Brian Quintenz, Eric Pan, Tracey Wingate
US treasury: Corrado Camera, Lawrence Norton, Rebekah Goshorn-Jurata
US Chamber of Commerce: Thomas Quaadman, Samantha DeZur, Sean Downey, Giovanni Campi

The following entities have organised speaking events to which Mrs Hübner participated and presented her work on CCP supervision:

APCO, Association of German Banks, Association for Financial Markets in Europe (AFME), British Chamber of Commerce, Eurofi, European Parliamentary Financial Services Forum (EPFSF), Financial Future, Fleishmann Hillard, Linklaters, QED

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	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			
<b>References</b>	COM(2017)0331 – C8-0191/2017 – 2017/0136(COD)			
<b>Date submitted to Parliament</b>	13.6.2017			
<b>Committee responsible</b> Date announced in plenary	ECON 11.9.2017			
<b>Committees asked for opinions</b> Date announced in plenary	BUDG 11.9.2017	ITRE 11.9.2017	JURI 11.9.2017	AFCO 11.9.2017
<b>Not delivering opinions</b> Date of decision	BUDG 29.6.2017	ITRE 11.10.2017	JURI 12.7.2017	AFCO 11.9.2017
<b>Rapporteurs</b> Date appointed	Danuta Maria Hübner 6.7.2017			
<b>Discussed in committee</b>	10.10.2017	21.2.2018	24.4.2018	
<b>Date adopted</b>	16.5.2018			
<b>Result of final vote</b>	+ : 45 - : 4 0 : 5			
<b>Members present for the final vote</b>	Gerolf Annemans, Burkhard Balz, Hugues Bayet, Pervenche Berès, Thierry Cornillet, Esther de Lange, Markus Ferber, Jonás Fernández, Giuseppe Ferrandino, Sven Giegold, Neena Gill, Roberto Gualtieri, Brian Hayes, Danuta Maria Hübner, Cătălin Sorin Ivan, Petr Ježek, Wolf Klinz, Georgios Kyrtos, Philippe Lamberts, Werner Langen, Sander Loones, Bernd Lucke, Olle Ludvigsson, Ivana Maletić, Gabriel Mato, Costas Mavrides, Alex Mayer, Bernard Monot, Luděk Niedermayer, Stanisław Ożóg, Sirpa Pietikäinen, Pirkko Ruohonen-Lerner, Anne Sander, Alfred Sant, Martin Schirdewan, Molly Scott Cato, Pedro Silva Pereira, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Paul Tang, Ramon Tremosa i Balcells, Ernest Urtasun, Marco Valli, Tom Vandenkendelaere, Marco Zanni			
<b>Substitutes present for the final vote</b>	Andrea Cozzolino, Ramón Jáuregui Atondo, Paloma López Bermejo, Thomas Mann, Joachim Starbatty, Romana Tomc, Lieve Wierinck			
<b>Substitutes under Rule 200(2) present for the final vote</b>	Agnieszka Kozłowska-Rajewicz			
<b>Date tabled</b>	25.5.2018			

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

45	+
ALDE	Thierry Cornillet, Petr Ježek, Wolf Klinz, Ramon Tremosa i Balcells, Lieve Wierinck
ECR	Sander Loones, Bernd Lucke, Stanisław Ożóg, Pirkko Ruohonen-Lerner, Joachim Starbatty
PPE	Burkhard Balz, Markus Ferber, Brian Hayes, Danuta Maria Hübner, Agnieszka Kozłowska-Rajewicz, Georgios Kyrtos, Esther de Lange, Werner Langen, Ivana Maletić, Thomas Mann, Gabriel Mato, Luděk Niedermayer, Sirpa Pietikäinen, Anne Sander, Theodor Dumitru Stolojan, Romana Tomc, Tom Vandenkendelaere
S&D	Hugues Bayet, Pervenche Berès, Andrea Cozzolino, Jonás Fernández, Giuseppe Ferrandino, Roberto Gualtieri, Cătălin Sorin Ivan, Ramón Jáuregui Atondo, Olle Ludvigsson, Costas Mavrides, Alfred Sant, Pedro Silva Pereira, Peter Simon, Paul Tang
VERTS/ALE	Sven Giegold, Philippe Lamberts, Molly Scott Cato, Ernest Urtasun

4	-
ECR	Kay Swinburne
ENF	Gerolf Annemans, Bernard Monot, Marco Zanni

5	0
EFDD	Marco Valli
GUE/NGL	Paloma López Bermejo, Martin Schirdewan
S&D	Neena Gill, Alex Mayer

Key to symbols:

+ : in favour

- : against

0 : abstention