

PUBLIC STATEMENT

ESMA is ready to review UK CCPs' and CSDs' recognition applications for a no-deal Brexit scenario

Recognition of UK CCPs

The European Securities and Markets Authority (ESMA) is publishing this Public Statement to clarify its plans for the recognition of Central Counterparties established in the United Kingdom (UK CCPs) as Third Country CCPs (TC-CCPs) under Regulation (EU) No 648/2012 (European Markets Infrastructure Regulation - EMIR) for a no-deal Brexit scenario, where UK CCPs will become TC-CCPs as of 30 March 2019.

As previously communicated in its public statement of 23 November 2018, the ESMA Board of Supervisors supports continued access to UK CCPs, in order to limit the risk of disruption in central clearing and to avoid any negative impact on the financial stability of the EU. Therefore, ESMA aims to recognise UK CCPs in a timely manner, where the four recognition conditions under Article 25 of EMIR are met.

1. The first condition is the adoption of an equivalence decision. ESMA welcomes the Commission Implementing Decision (EU) adopted on 19 December 2018 “determining for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation 648/2012 of the European Parliament and the Council” (equivalence decision).

The equivalence decision on the UK enters into force on the day after its publication in the Official Journal of the EU. It will apply for a period of 12 months starting from the date following that on which the Treaties cease to apply to, and in, the UK (Brexit date) and only in case no agreement to extend the two year period referred to in Article 50(3) of the Treaty on European Union is reached and no withdrawal agreement is concluded in accordance with Article 50(2) of that Treaty (no-deal Brexit).

2. The second condition is that the CCPs are authorised in the UK and are subject to effective supervision and enforcement ensuring full compliance with the prudential

requirements applicable therein. The Bank of England (BoE) is expected to provide ESMA with a letter confirming that the UK CCPs are authorised in the UK and comply with the prudential requirements applicable in the UK.

3. The third condition is the establishment of cooperation arrangements between ESMA and the BoE. ESMA has already engaged with the BoE to create a Memorandum of Understanding (MoU) establishing the necessary cooperation arrangements for the recognition of UK CCPs, in accordance with Article 25(7) of EMIR. The MoU is in the process of being refined in order to ensure, in particular, an effective exchange of information and coordination of supervisory activities between ESMA and the BoE, in line with Recitals 12 and 13 of the equivalence decision, which is “an essential condition for maintaining the determination of equivalence” (Recital 11).

The BoE has already confirmed that it will provide information to ESMA in line with its current obligations and those set out in the equivalence decision. Based on these assurances ESMA expects that the MoU will be agreed by the end of January. The MoU, like the equivalence decision, will take effect from the date following Brexit date, under a no-deal Brexit scenario.

4. The fourth and last condition is that the UK is not on the list of third-country jurisdictions which have strategic deficiencies in their anti-money laundering and countering the financing of terrorism regimes (high-risk third countries) under the Commission Delegated Regulation (EU) No 2016/1675 (as subsequently amended) under Directive 2015/849 (which repealed Directive 2005/60/EC). ESMA has no expectation that the UK will be added to this list upon Brexit date.

The condition in the equivalence decision only concerns the exchange of information between ESMA and the BoE, which will be covered by the MoU. No other condition apart from the four described above will need to be assessed by ESMA.

Against this background, ESMA is now ready to review applications for recognition under EMIR from UK CCPs, in order to perform the administrative steps, consultation, and the assessment envisaged in Article 25 of EMIR. ESMA has already engaged with UK CCPs to solicit their applications.

To ensure continued access to UK CCPs for EU clearing members and trading venues, ESMA aims to adopt the recognition decisions well ahead Brexit date. Similarly to the equivalence

decision, they will take effect on the date following Brexit date, under a no-deal Brexit scenario.

Recognition of the UK CSD

The ESMA Board of Supervisors also supports continued access to the UK Central Securities Depository (CSD), in order to allow the UK CSD to serve Irish securities and to avoid any negative impact on the Irish securities market.

Therefore, ESMA welcomes the Commission Implementing Decision (EU) of 19 December 2018 “determining, for a limited period of time, that the regulatory framework applicable to Central Securities Depositories of the United Kingdom of Great Britain and Northern Ireland is equivalent in accordance with Regulation (EU) 909/2014 of the European Parliament and the Council”.

ESMA will follow a similar process as described for UK CCPs, for the recognition of the UK CSD as a Third-Country CSD under Regulation (EU) 909/2014 (CSDR) in a no-deal Brexit scenario.

Notes for editors

1. [Regulation \(EU\) No 648/2012 \(European Markets Infrastructure Regulation\)](#)
2. [Regulation \(EU\) 909/2014 \(Central Securities Depository Regulation\)](#)
3. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.

It achieves these objectives through four activities:

- i. assessing risks to investors, markets and financial stability;
 - ii. completing a single rulebook for EU financial markets;
 - iii. promoting supervisory convergence; and
 - iv. directly supervising specific financial entities.
4. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board, and with national authorities with competencies in securities markets (NCAs).

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