

Final Report

EMIR RTS on colleges for central counterparties

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1 Executive Summary

Reasons for publication

This Final Report presents draft amendments to the regulatory technical standards (RTS) incorporated in Commission Delegated Regulation (EU) No 876/2013 on colleges for central counterparties (the “Delegated Regulation”).

The Delegated Regulation has been developed by the European Securities and Markets Authority (ESMA) and adopted by the Commission in accordance with Article 18(6) of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories (EMIR). The proposed amendments reflect the amendments to EMIR introduced by Regulation (EU) No 2024/2987 of the European Parliament and of the Council of 27 November 2024 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (EMIR 3).

The proposed draft amendments are limited in scope. They concern only competent authorities and do not impose any additional requirements on market participants. Taking this into account and to facilitate as soon as possible proper adjustment of CCP colleges to the new provisions of EMIR 3, in accordance with Article 10(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (ESMA Regulation), ESMA has not conducted any open consultation. ESMA has consulted the Securities and Markets Stakeholder Group as well as the relevant competent authorities. In accordance with Article 18(6) of EMIR, ESMA has also cooperated with the European System of Central Banks (ESCB) in finalising these draft RTS.

Contents

This report presents draft amendments to the Delegated Regulation to reflect the changes introduced by EMIR 3 to Article 18 of EMIR on the functioning of CCP colleges. Section II explains the background to ESMA proposals and outlines the proposed changes to the practical arrangements for the functioning of the colleges. Annex I presents the mandate under Article 18(6) of EMIR. The draft amendments to the Delegated Regulation are presented in Annex II.

The proposed draft amendments concern the practical arrangements for the functioning of the college with regard to: the respective roles of the co-chairs and the interaction between

them, the information to be shared with the college and the modalities of communication between college members.

Next Steps

The Final Report, including the draft amendments to the Delegated Regulation presented in Annex II will be sent to the Commission. The Commission has three months to decide whether to endorse the amendments to the technical standards in the form of a Commission Delegated Regulation. Following the endorsement, they are then subject to non-objection by the European Parliament and the Council.

2 Final Report

2.1 Background

1. In accordance with Article 18(6) of Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR)¹, the European Securities and Markets Authority (ESMA) is required to, in cooperation with the ESCB, develop draft regulatory technical standards (RTS) specifying the conditions under which the Union currencies are to be considered as the most relevant and the details of the practical arrangements for the functioning of the CCP colleges (see Annex I – the Legislative Mandate).
2. On 27 September 2012, ESMA published its proposal for draft RTS on colleges for central counterparties under Article 18(6) of EMIR which were adopted by the Commission, subject to some adjustments, in the form of the Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 on colleges for central counterparties (the Delegated Regulation)².
3. EMIR has been amended by Regulation (EU) No 2019/2099 of the European Parliament and of the Council of 23 October 2019 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (EMIR 2.2)³. The Delegated Regulation has been amended accordingly by Commission Delegated Regulation (EU) 2020/2145⁴ to reflect the amendments to EMIR introduced by EMIR 2.2.
4. Regulation (EU) No 2024/2987 of the European Parliament and of the Council of 27 November 2024 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets⁵ (EMIR 3) has further amended EMIR, including amendments to Article 18(1), (4) and (5) of EMIR, affecting the functioning of EMIR Colleges.
5. In order to facilitate a smooth adjustment of CCP colleges to the amended provisions introduced by EMIR 3, ESMA has prepared a number of amendments to the Delegated Regulation to reflect the amendments to EMIR (see Annex 2 – the draft technical standards). The draft amendments to the Delegated Regulation have been written to

¹ OJ L 201, 27.7.2012

² OJ L 244, 13.9.2013

³ OJ L 322, 12.12.2019

⁴ Commission Delegated Regulation (EU) 2020/2145 of 1 September 2020 amending Delegated Regulation (EU) No 876/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards changes to the composition, functioning and management of colleges for central counterparties; OJ L 428, 18.12.2020, p. 1–4

⁵ OJ L, 2024/2987, 4.12.2024

ensure a consistent application and a coherent functioning of colleges across the Union, however maintaining, to the extent possible, the appropriate degree of flexibility. ESMA is also reviewing the Guidelines regarding written agreements between members of CCP colleges adopted on 1 July 2021⁶.

2.2 Proposed amendments and clarification

6. ESMA has reviewed the provisions in the Delegated Regulation in light of the changes introduced by EMIR 3.
7. Concerning Article 1 of the Delegated Regulation regarding the conditions under which EU currencies are considered as the most relevant, Article 1(1) of the Delegated Regulation is amended to include a reference to non-financial instruments cleared by the CCP when identifying the most relevant Union currencies, as EMIR now includes references to non-financial instruments.
8. Regarding the details of the practical arrangements referred to in Article 18(5) of EMIR, ESMA is of the view that several amendments are needed to reflect the changes introduced to EMIR and proposes the following amendments:
 - Article 2 of the Delegated Regulation is amended to reflect the changes introduced in Article 18(1) of EMIR specifying the moment by which a college should be established and the interaction between the co-chairs in that context.
 - Articles 3 and 4 of the Delegated Regulation are amended to reflect the changes introduced in Article 18 of EMIR in order to clarify the roles of the co-chairs and governance of colleges with a view to ensure the effective and consistent functioning of colleges for all CCPs across the Union.
 - Article 5 of the Delegated Regulation is amended to clarify what additional information the CCP's competent authority should provide to college members. The competent authority and the college members should use the central database provided by Article 17c of Regulation (EU) No 648/2012 to exchange any information.
9. Article 5a of the Delegated Regulation on review and evaluation is deleted to reflect changes introduced by Article 21(4) of EMIR as the dedicated process for an Opinion from ESMA and the College is provided by Article 17b of EMIR.

⁶ ESMA70-151-3431 (available at: [esma70-151-3431_guidelines_on_written_agreements_between_members_of_ccp_colleges.pdf \(europa.eu\)](https://esma.europa.eu/press-material/press-news/press-news-details/esma70-151-3431-guidelines-on-written-agreements-between-members-of-ccp-colleges.pdf))

2.3 Way forward

10. With a view to facilitate as soon as possible a proper functioning and management of CCP colleges in accordance with the new provisions introduced in EMIR, ESMA is of the view that it would be disproportionate to conduct an open public consultation on the proposed amendments to the Delegated Regulation presented in this report.
11. Indeed, the proposed amendments to the Delegated Regulation are straightforward and limited in scope. Furthermore, they only concern competent authorities and do not impose any additional requirements on market participants.
 - Therefore, in accordance with Article 10(1) of the ESMA Regulation, ESMA does not consider it proportionate to run a public consultation. Instead, ESMA has consulted the ESCB and the other relevant competent authorities participating in CCP colleges. ESMA has also consulted the Securities and Markets Stakeholder Group.
12. ESMA will thus submit to the Commission the draft amendments to the Delegated Regulation presented in Annex II for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instruments applicable in all Member States of the European Union. Following the endorsement, they are then subject to non-objection by the European Parliament and the Council.

3 Annexes

3.1 Annex I

Legislative mandate to develop technical standards

Article 18(6) of Regulation EU No 648/2012

College

6. In order to ensure the consistent and coherent functioning of colleges across the Union, ESMA shall, in 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 2 January 2021.

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.

3.2 Annex II

Draft technical standards

COMMISSION DELEGATED REGULATION (EU) No .../..

amending Delegated Regulation (EU) No 876/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards regulatory technical standards on colleges for central counterparties

of []

(text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁷ and in particular Article 18(6), third subparagraph, thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 876/2013⁸ lays down regulatory technical standards on colleges for central counterparties.
- (2) Regulation (EU) No 648/2012 has been amended by Regulation (EU) No 2024/2987 of the European Parliament and of the Council as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets. These amendments include changes to the functioning and management of CCP colleges, which have to be reflected in Delegated Regulation (EU) No 876/2013.
- (3) Without prejudice to the ultimate responsibility of the national competent authority and with a view to further enhance supervisory convergence and the consistent functioning of all colleges, ESMA should aim to coordinate the functioning of the colleges and ensure that each college performs its tasks and achieves its objectives in accordance with Regulation (EU) No 648/2012. To that aim, and with the objective of converging supervisory best practices, the co-chairs should discuss the

⁷ OJ L 201, 27.7.2012

⁸ Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties; OJ L 244, 13.9.2013, p. 19–22

implementation of the annual supervisory priorities referred to in point (ba) of Article 24a(7) of Regulation (EU) No 648/2012.

- (4) In light of the amendments to Regulation (EU) No 648/2012, the non-exhaustive list of information items to be shared with the college should be updated.
- (5) In order to allow for an efficient and timely flow of information between college members, the CCP's competent authority and college members should circulate information through the Central Database provided by Article 17c of Regulation EU No 648/2012.
- (6) Delegated Regulation (EU) No 876/2013 should therefore be amended accordingly.
- (7) Since the amendments are limited in scope and concern only competent authorities without imposing any additional requirements on market participants and in order to facilitate as soon as possible proper adjustment of CCP colleges to the new provisions of Regulation EU No 648/2012, in accordance with Article 10(1) of Regulation (EU) No 1095/2010⁹, ESMA has considered that it is strongly disproportionate to the scope and impact of the regulatory technical standards to conduct a public consultation. However, ESMA has consulted the relevant competent authorities and the European System of Central Banks.
- (8) This Regulation is based on draft regulatory technical standards submitted by ESMA to the Commission.

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) No 876/2013

Delegated Regulation (EU) 876/2013 is amended as follows:

1. In Article 1, paragraph 1 is replaced by the following:

'The most relevant Union currencies shall be identified on the basis of the relative share of each currency in the CCP's average end-of-day open positions across all financial

⁹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC; OJ L 331, 15.12.2010, p. 84–119

and non-financial instruments cleared by the CCP, calculated over a period of one year.’

2. In Article 2, paragraph 1 is replaced by the following:

‘1. Following the notification that an application is complete as referred to in point (a) of the first subparagraph of Article 17(2) of Regulation (EU) No 648/2012, the CCP’s competent authority shall circulate a proposal for the written agreement under Article 18(5) of Regulation (EU) No 648/2012 to the members of the college determined in accordance with Article 18(2) of Regulation (EU) No 648/2012. That written agreement shall include a process for the review of the composition of the College at least on an annual basis. It shall also include an amendment process whereby changes may be initiated at any time by the CCP’s competent authority or by other members of the college, subject to approval by the college in accordance with the procedure set out in this Article.’

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

‘3. Where the members of the college express comments regarding the proposal for the written agreement circulated pursuant to paragraph 1, they shall submit those comments together with a thorough explanation to the co-chairs within 10 calendar days. If relevant, the co-chairs shall agree on and prepare a revised proposal and convene a meeting to agree on, and adopt, the final written agreement taking into account the deadline referred to in Article 18(1) of Regulation (EU) No 648/2012.’

4. In Article 2, paragraph 4a is replaced by the following:

‘4a. Competent authorities as referred to in Article 18(2), point (ca), of Regulation (EU) No 648/2012, and central banks of issue as referred to in Article 18(2), point (i), of that Regulation, that wish to participate in the college shall submit a reasoned request to the CCP’s competent authority. The CCP’s competent authority shall, within 20 calendar days of the receipt of the request, either provide the requesting competent authority or central bank with a copy of the written agreement for review and approval, or substantiating in writing why the request has been rejected. The CCP’s competent authority shall inform the members of the college of any such requests and their respective outcome.’

5. In Article 3, paragraph 1 is replaced by the following:

‘1. Where a request for information is made to a college by a competent authority of a Member State which is not a member of the college in accordance with Article 18(3) of Regulation (EU) No 648/2012, the co-chairs, after having consulted the college, shall decide on the most appropriate way to provide and request information to and from the authorities that are not members of the college.’

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

‘2. Each member of the college shall designate one participant to attend the meetings of the college and may designate one alternate, with the exception of the co-chairs which may require additional participants who shall have no voting rights.’

7. In Article 4, paragraph 1 is replaced by the following:

‘1. The co-chairs shall ensure that the work of the college facilitates the tasks to be performed in accordance with Regulation (EU) No 648/2012.’

8. In Article 4, paragraph 2 is replaced by the following:

‘2. ESMA shall have a coordination role in monitoring the tasks performed by a college and shall ensure that its objectives are in line with those of other colleges as far as possible.’

9. In Article 4, the first sentence of paragraph 3 is replaced by the following:

‘3. The co-chairs shall at least ensure that:’

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

‘4. To ensure the efficiency and effectiveness of the college, the co-chairs shall act as a central point of contact for any matter related to the practical organisation of the college and keep each other informed. The co-chairs shall at least perform the following tasks:

- (a) draw-up, update and circulate the contact list of college members;
- (b) prepare the agenda as well as documentation for meetings or activities of the college;
- (ba) discuss the implementation of the annual supervisory priorities referred to in point (ba) of Article 24a(7) of Regulation (EU) No 648/2012;
- (c) record minutes of the meetings and formalise action points;
- (d) manage the college website, if any;
- (e) where necessary, provide information and specialised teams where appropriate, to assist the college in its tasks;
- (f) share all information in a timely and appropriate manner among members of the college.

For the purposes of point (b), the co-chairs shall circulate a draft agenda for each meeting of the college, other than for meetings called in emergency situations, well in advance of each meeting, in order to enable the members of the college to contribute to the setting of the agenda, in particular by adding points to the agenda.

The agenda shall be finalised by the co-chairs and distributed to college members sufficiently in advance of a meeting of the college. The co-chairs and other college members shall distribute any information to be considered at a meeting of the college well in advance of the meeting.

For the purposes of point (c), the CCP's competent authority shall distribute the minutes of meetings to college members once these are agreed by the co-chairs and as soon as practicable following the meetings and give them sufficient time to comment.'

11. In Article 4, paragraph 5 is replaced by the following:

'5. The frequency of college meetings shall be determined by the co-chairs having regard to the CCP's size, nature, scale and complexity, the systemic implications of the CCP across jurisdictions and currencies, the potential impacts of the activities of the CCP, external circumstances and potential requests by college members. There shall be at least an annual meeting of the college and if deemed necessary by the co-chairs, a meeting each time that a decision needs to be taken under Regulation (EU) No 648/2012. The co-chairs shall organise, periodically, and at least annually, meetings between members of the college and the senior management of the CCP.

College members may request that the co-chairs hold a meeting of the college. The co-chairs shall duly provide reasons for any rejection of such request.'

12. In Article 4, paragraphs 7 and 8 are replaced by the following:

'7. The co-chairs shall endeavour to ensure that each college meeting has a valid quorum for decisions to be taken. In the case that a quorum is not met, the co-chairs shall ensure that any decisions that need to be taken are postponed until a quorum is present, taking into account the relevant time limits set out by Regulation (EU) No 648/2012.

8. The college may vote by written procedure, where proposed by the co-chairs or at the request of a college member.'

13. In Article 5, paragraph 1 is replaced by the following:

'1. Each member of a college shall provide, in a timely manner, the co-chairs with all information necessary for the operational functioning of the college and for the performance of

the key activities in which the member participates. The co-chairs shall provide the members of the college with similar information in a timely manner.'

14. In Article 5, the points (m), (o), (p) and (r) of paragraph 2 thereof, are replaced by the following:

'(m) reports on performance problems or incidents occurred, including ICT and cyber-related incidents, and remedial actions taken;

(o) overview of major commercial proposals, new products or services to be offered including any extensions of activities or services to be implemented by the CCP in accordance with Article 15a of Regulation EU No 648/2012, and any information on changes to the CCP's business;

(p) changes in the CCP's risk models and parameters, including changes to parameters referred to in Article 49(1h) of Regulation (EU) No 648/2012, stress testing and back testing;

(r) changes in any outsourcing arrangements of the CCP for major activities linked to risk management, including any changes to the list of critical third-party service providers of the CCP;'

15. In Article 5, the following points are added in paragraph 2 after point (u):

'(v) any information relevant to ad-hoc meetings between ESMA, the CCP's competent authority and the CCP as well as any relevant information received in relation to on-site inspections planned, ongoing or already carried out;

(w) any information relevant to the implementation status of recommendations or conditions included in ESMA or College opinions or ESMA validations;

(x) any information regarding the competent authority's decision to follow or not follow the input from ESMA and the college pursuant to Article 17a(3) of Regulation (EU) No 648/2012;

(y) a presentation of the CCP's competent authority's annual supervisory programme and of its implementation;'

16. In Article 5, paragraphs 4, 5 and 6 are replaced by the following:

'4. The CCP's competent authority's draft decision, report or other measure referred to in Article 17(3), Article 17b(2) and Article 49(1d) of Regulation (EU) No 648/2012 shall be submitted to the college within an appropriate timescale to ensure that college members are able to review it and contribute to the college opinion.

5. College members shall exchange all information through the central database provided by Article 17c of Regulation (EU) No 648/2012.'

17. Article 5a is deleted.

Article 2

Entry into force

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 Commission

The President

3.3 Annex III – Advice of the Securities and Markets Stakeholder Group

In accordance with Article 10(1) and Article 37(1) of the ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comment.