



European Securities and
Markets Authority

Practical Guidance

For the recognition of third-country CCPs by ESMA

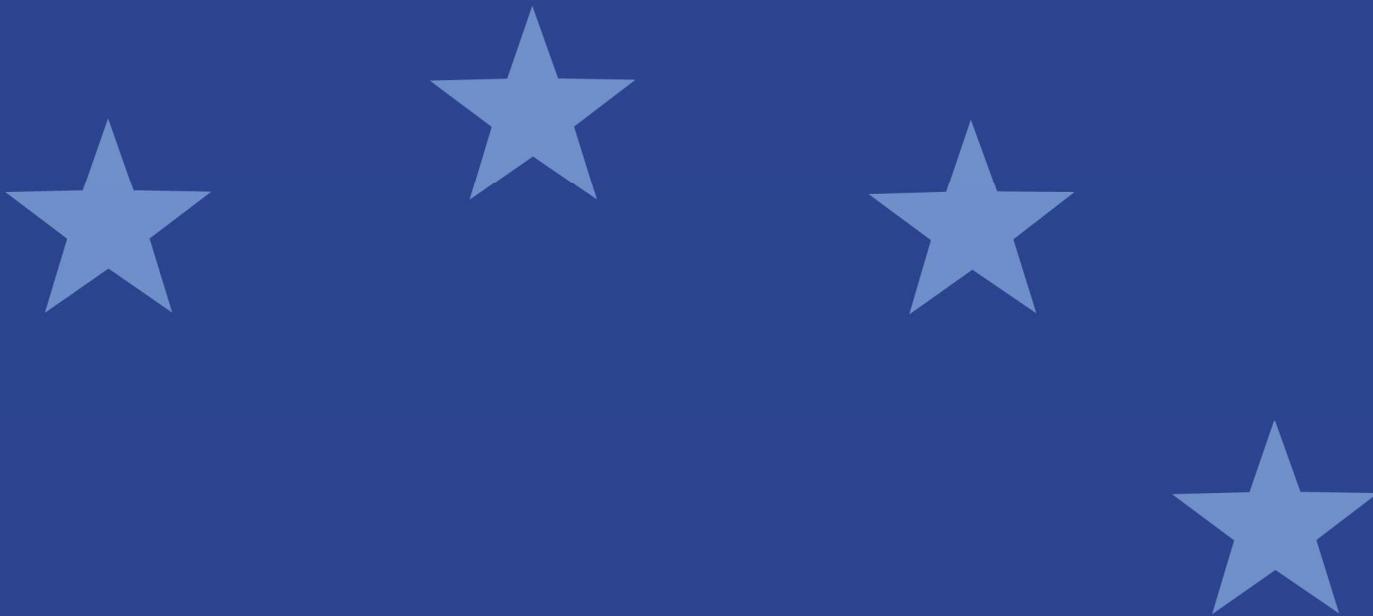


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1 Introduction

1. The purpose of this note is to provide information on the recognition by ESMA of Third Country CCPs (TC-CCPs) under Chapter 4 of Title III of Regulation (EU) No 648/2012¹ (EMIR) and Chapter II of Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards on requirements for central counterparties (RTS)².
2. This note does not address issues related to a substantive examination of whether the conditions for recognition are met for individual TC-CCPs.

2 Communication with ESMA prior to the application

2.1 Handling of questions before the application

3. In order to establish a quick and efficient way of communication between ESMA and TC-CCP applicants for recognition under Chapter 4 of Title III of EMIR, a mailbox TC-CCP@esma.europa.eu has been established.
4. General questions on the preparation of an application for recognition should be sent to this email address, clearly stating on behalf of which TC-CCP applicant the questions are submitted and, if possible, the planned date for the TC-CCP's application.
5. Please note that ESMA will only review and respond to general questions regarding the preparation of an application for recognition or questions regarding procedural matters that are relevant to an application for recognition. ESMA will not review or respond to questions which would require or imply a pre-assessment of any TC-CCP's application for recognition.
6. For the avoidance of doubt, ESMA does not review draft applications for recognition or parts of an application ahead of the full submission. Only the final version of a TC-CCP's application for recognition will be acknowledged, reviewed or otherwise responded to.

2.2 Indication of the planned application date

For organisational purposes, a TC-CCP is requested to send an email to TC-CCP@esma.europa.eu at least 5 working days before the date on which it intends to

¹ 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 L 201, 27.7.2012, p. 1.

² Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012, supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, OJ L 52, 23.2.2013, p. 41.

submit its application, indicating the planned application date. This email is for information only and is not binding on the TC-CCP applicant.

3 Timeframe for submission of an application

7. According to Article 25(2) of EMIR, ESMA may only recognise a TC-CCP where certain conditions have been satisfied. In particular the European Commission needs to have adopted an implementing act determining, amongst other things, that the legal and supervisory arrangements of the jurisdiction in which the CCP is established are equivalent to the requirements laid down in EMIR (Article 25(2)(a) of EMIR) and the jurisdiction in which the TC-CCP is established needs to have equivalent systems for anti-money laundering and combating the financing of terrorism to those established in the European Union (Article 25(2)(d) of EMIR).
8. ESMA strongly recommends that prior to submitting an application for recognition, potential applicants ascertain whether the conditions in Article 25(2) are, or are likely to be, fulfilled. This is important because if the conditions in Article 25(2) are not fulfilled then ESMA will not be able to grant the recognition, meaning that clearing members and trading venues established in the European Union will have to cease using the clearing services of the TC-CCP with immediate effect.

4 Submission of an application

4.1 Format of the application and number of copies

9. A TC-CCP's application for recognition shall be submitted to ESMA by post. Applications should not be sent by email.
10. An applicant TC-CCP is requested to send to ESMA:
 - (a) two paper versions of its application including one original; and
 - (b) an electronic version of its application saved on an electronic device which stores information in a durable medium, such as USB-key (preferred option), a CD-Rom, or a DVD and, if the content is compressed or encrypted, the relevant software to read it.
11. The application should be sent to: Post-Trading Team, Markets Department, ESMA, CS 60747, 103 rue de Grenelle, 75345 Paris Cedex 07, France.
12. The paper version must be strictly identical to the electronic version and must be sent to ESMA together with the electronic version.
13. If requested by ESMA, the TC-CCP applicant must send certified copies of supporting documentation.

14. A unique reference number should be given to each document submitted in support of the application, and a table should be provided which clearly links the reference number of the document with the relevant article of EMIR and of the RTS in relation to which the document is provided.

4.2 Language of the application

15. Documents sent to ESMA (including applications) should be drafted in English and the working language for the examination by ESMA of all TC-CCP applications will also be English.

4.3 Information to be provided in an application

16. Chapter II of the RTS sets out the minimum information that must be provided by a TC-CCP applying for recognition under EMIR. Please refer to:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450770258425&uri=CELEX:32012R0648>

17. Please note that entities can apply for recognition under Article 25 of EMIR only if they are established in a third-country and if they meet the definition of a central counterparty provided in Article 2(1) of EMIR³. The application should provide clear evidence that the applying entity meets this definition.
18. With regards to that information which should be provided under sub-paragraph (k), of Chapter II of the RTS, an applicant TC-CCP should note that there are two limbs to this requirement. The first is a requirement to provide a copy of the rules and internal procedures of the CCP. The second is a requirement to provide evidence of the TC-CCP's full compliance with the requirements applicable in the third country.
19. In respect of this second limb, a TC-CCP is not expected to provide a copy of all of the requirements to which the TC-CCP is subject (i.e. all of the legislation, rules of the relevant competent authorities, or other legally binding material). Instead, it is expected that the relevant competent authorities will provide ESMA with a letter confirming that the TC-CCP complies with the requirements applicable in that third country.
20. Where the implementing act adopted in accordance with Article 25(6) contains specific conditions to the recognition of the TC-CCP, the TC-CCP must provide the relevant information demonstrating that they are fulfilled.

5 Acknowledgment of receipt of the application

21. An acknowledgement of receipt will be sent to the TC-CCP applicant on the second working day following receipt of the application.

³ 'CCP' means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer

22. An acknowledgement of receipt does not imply that ESMA considers the application to be complete under Article 25(4) of EMIR.

6 Deadlines

23. For the calculation of deadlines referred to in EMIR, “working days” are defined as the working days of ESMA.
24. For a list of dates when ESMA is closed (and which are not considered to be working days), please refer to:

<https://www.esma.europa.eu/about-esma/esma-in-short/contact-info>

25. The computation of deadlines starts from the working day following the relevant event (e.g. receipt of an application, notification of completeness, receipt of additional information when the application was considered as incomplete).

7 Assessment of completeness, requests for additional information and notification of completeness

26. If the application is considered as incomplete, ESMA will send a letter of incompleteness to the TC-CCP applicant, together with a list of the additional information that must be submitted.
27. ESMA will set a deadline for the additional information to be provided by the TC-CCP applicant. The standard deadline is 30 working days, extended to 90 working days if necessary due to the complexity or volume of the requested information.
28. The applicant TC-CCP can provide its response to a request for additional information in paper version or by email to TC-CCP@esma.europa.eu.
29. ESMA will acknowledge the receipt of the additional information within two working days of its receipt.
30. Where a TC-CCP does not provide the additional information requested by ESMA within the requisite timeframe, and does not receive prior agreement from ESMA to extend the deadline, then ESMA may consider the application to have been withdrawn.
31. When the requested information is received, ESMA will assess whether the additional information is sufficient for the application to be complete. When the application is considered complete, ESMA will send a letter of completeness to the TC-CCP applicant.
32. A letter of completeness does not imply that ESMA considers that recognition will be granted.

8 Examination of the application

33. If need be, requests for additional information may be sent by ESMA during the examination phase of the application. Deadlines for receiving a response from the TC-CCP may be shorter during the examination phase. In principle, the standard deadline will be 3 working days.

9 Decision on the registration application

34. Pursuant to Article 25 of EMIR, a decision on recognition will be adopted within 180 working days from notification by ESMA that a TC-CCP's application is considered to be complete.

35. The decision on the TC-CCP's application will be adopted by ESMA's Board of Supervisors after consultation with the authorities and entities referred to in Article 25(3) of EMIR.

10 Publication on ESMA's website

36. Pursuant to Article 25(4) of EMIR, ESMA publishes on its website the [list of recognised third-country CCPs](#).

37. ESMA also published on its website a [list of third-country CCPs that have applied for recognition](#)⁴. This list includes only those TC-CCPs which have applied for recognition under Article 25 of EMIR and which expressly agreed to have their name mentioned publicly. In the application for recognition as a TC-CCP under EMIR, please indicate whether you consent to being included in the list to be published on ESMA's website.

⁴ This list is not necessarily exhaustive and it remains subject to further updates. The list is provided for information purposes only and it is without prejudice to any future ESMA decision of the recognition of the applicant CCPs.