



European Securities and
Markets Authority

Final Report

EMIR RTS on colleges for central counterparties





Table of Contents

1	Executive Summary	3
2	Final Report.....	4
2.1	Background.....	4
2.2	Proposed amendments and clarification.....	4
2.3	Way forward.....	6
3	Annexes	8
3.1	Annex I – ESMA mandate to develop draft technical standards	8
3.2	Annex II – Draft technical standards.....	9
3.1	Annex II – Advice of the Securities and Markets Stakeholder Group	14

1 Executive Summary

Reasons for publication

This final report presents draft amendments to regulatory technical standards 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 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, which entered into force on 1 January 2020.

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, in accordance with Article 10(1) of the ESMA Regulation, ESMA has not conducted any open consultation. However, ESMA has consulted the relevant competent authorities as well as the Securities and Markets Stakeholder Group. In accordance with Article 18(6) of EMIR, ESMA has also cooperated with the European System of Central Banks (ESCB) in finalising these draft regulatory standards.

Contents

This report provides explanations on the draft amendments to the Delegated Regulation with respect to the conditions under which the Union currencies referred to in point (h) Article 18(2) are to be considered as the most relevant and the practical arrangements for the functioning of the college. Section II explains the background to ESMA proposals and outlines the proposed changes and the underlying rationale. Annex I presents the mandate in Article 18(6) as amended. 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: voting procedures, the procedures for setting the agenda of college meetings, review and evaluation of the arrangements, strategies, processes and mechanisms implemented by the CCP and the risks to which the CCP is exposed, the minimum timeframes for the assessment of the relevant documentation by the college members and the modalities of communication between college members.

Next Steps

The Final Report will be sent to the European Commission, and ESMA is submitting the draft amendments to the Delegated Regulation presented in the Annex II for endorsement 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. On 27 September 2012, European Securities and Markets Authority (ESMA) published its proposal for draft Regulatory Technical Standards on colleges for central counterparties under 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 which were adopted by the Commission, subject to some adjustments, with the Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 on colleges for central counterparties (the Delegated Regulation)².
2. Regulation (EU) No 648/2012 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.
3. Article 18(6) of EMIR as amended renewed the mandate to ESMA in cooperation with the ESCB, to develop draft regulatory technical standards 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).
4. In order to facilitate a smooth adjustment of CCP colleges to the amended provisions, ESMA has prepared a number of amendments to the Delegated Regulation to reflect the amendments to EMIR (see Annex 2).
5. ESMA is also reviewing the Guidelines regarding written agreements between members of CCP colleges adopted on 4 June 2013.⁴ The draft amendments to the Delegated Regulation have been written so that the criteria and conditions established will ensure a consistent application and a coherent functioning of colleges across the Union, however maintaining, to the extent possible, the appropriate degree of flexibility.

2.2 Proposed amendments and clarification

6. ESMA reviewed the provisions in the Delegated Regulation in the light of the changes introduced by EMIR 2.2.
7. Concerning Article 1 of the Delegated Regulation regarding the conditions under which EU currencies are considered as the most relevant, ESMA believes that the current criteria

¹ OJ L 201, 27.7.2012

² OJ L 244, 13.9.2013

³ OJ L 322, 12.12.2019

⁴ https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-661_report_gr_on_college_written_agreement_-_final_for_publication_20130604.pdf

envisaged in Article 1 of the Delegated Regulation are consistent with the new provision included with the new point (i) of Article 18(2) of EMIR and should therefore be maintained unchanged.

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 introduced changes to EMIR and proposes the following amendments:

- New paragraph 4a is to be introduced in Article 2 of the Delegated Regulation to reflect the changes introduced in Article 18(2) of EMIR specifying the procedure under which competent authorities and central banks of issue referred to in points (ca) and (i), respectively, of Article 18(2) of EMIR can apply for membership in a college as non-voting members. It specifies that such authorities should apply to the competent authority of the CCP. If the competent authority refuses the request it should provide reasons therefor.
- Article 3(4) of the Delegated Regulation is amended to add a reference to the new point (i) of Article 18(2) of EMIR, i.e. to central banks of issue of currencies other than the most relevant.
- New paragraph 6 is introduced in Article 3 of the Delegated Regulation to reflect the changes introduced in the third sub-paragraph of Article 19(3) of EMIR that the ECB has two votes in a college where it is a member pursuant to both point (c) and point (h) of Article 18(2) of EMIR; and to reflect the mandate in point (i) of the second sub-paragraph of Article 18(5) of EMIR regarding voting procedure.
- New sub-paragraphs are introduced in Article 4 of the Delegated Regulation to reflect the mandate in points (ii) and (v) of the second sub-paragraph of Article 18(5) of EMIR regarding the setting of the agenda of college meetings and the appropriate minimum timeframes for the assessment of the relevant documentation by the college members; and to reflect changes in the last sub-paragraph of Article 18(4) of EMIR that college members are entitled to contribute to the setting of the agenda for college meetings. It specifies the timeframes within which agendas for college meetings need to be distributed and finalised. It further details the procedure for recording and distributing minutes of college meetings.
- The second sub-paragraph of Article 4(5) of the Delegated Regulation is amended to specify that college members may request a meeting of the college to reflect the mandate in point (iii) of the second sub-paragraph of Article 18(5) of EMIR regarding frequency of college meetings.
- New paragraph (8) is introduced in Article 4 of the Delegated Regulation to specify that a vote can be taken by a written procedure to reflect the mandate in point (i) of the second sub-paragraph of Article 18(5) of EMIR regarding voting procedure.
- Article 5(2) of the Delegated Regulation is amended to clarify that the CCP's competent authority should provide information to college members.
- New point (r) is added to Article 5(2) of the Delegated Regulation to include a reference to outsourcing arrangements to reflect the change introduced in Article 18(1) of EMIR.

- New point (s) is added to Article 5(2) of the Delegated Regulation to add reference to changes in the CCP's participation requirements, clearing membership models and account segregation models.
- New point (t) is added to Article 5(2) of the Delegated Regulation to add reference to changes in the CCP's default management procedures, and reports on the CCP's test of its default management procedures conducted in accordance with Article 49(2) of EMIR.
- New point (u) is added to Article 5(2) of the Delegated Regulation to add reference to changes in the CCP's payment and settlement arrangements.
- New paragraph (5) is added to Article 5 of the Delegated Regulation to reflect the changes introduced by the mandate in point (vi) of the second sub-paragraph of Article 18(5) of EMIR regarding modalities of communication between college members. It specifies that transmission of confidential information should be done via secure means of communication and that college members should always be informed on an equal basis.
- New Article 5a on review and evaluation is added to the Delegated Regulation to reflect changes introduced by the mandate in point (v) of the second sub-paragraph of Article 18(5) of EMIR. It specifies that the report pursuant to Article 21(4) of EMIR should be submitted by the CCP's competent authority to the college within an appropriate timescale and that college members should be able to raise any points of interest or concern with regard to the review or evaluation.

2.3 Way forward

9. 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.
10. 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.
11. Therefore, in accordance with Article 10(1) of the ESMA Regulation, ESMA does not consider 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 European Commission the draft amendments to the Delegated Regulation presented in the Annex 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 – ESMA mandate to develop draft 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 repositories⁵ and in particular Article 18(6) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 876/2013 lays down regulatory technical standards on colleges for central counterparties.
- (2) Regulation (EU) No 648/2012 has been amended by Regulation (EU) No 2019/2099 of the European Parliament and of the Council as regards, among other things, the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs. These amendments include changes to the composition, functioning and management of CCP colleges, which have to be reflected in Delegated Regulation (EU) No 876/2013.
- (3) Where a competent authority or a central bank of issue have submitted a request for participation as a non-voting member of a CCP college pursuant to point (ca) of Article 18(2) or respectively point (i) of Article 18(2) of Regulation (EU) No 648/2012, the CCP's competent authority should respond within a reasonable time. Where the CCP's competent authority refuses the request of the requesting competent authority or central bank it should justify its position by providing detailed reasons.
- (4) In accordance with Article 19(3) of Regulation (EU) No 648/2012, where the ECB is a member of a college pursuant to both points (c) and (h) of Article 18(2) of Regulation (EU) No 648/2012, the ECB has two votes in the college and therefore it should have two participants with voting rights.
- (5) In order to allow for an efficient flow of documentation between college members and for timely contribution by college members to the relevant discussions, the CCP's competent authority should circulate sufficiently in advance of a college

⁵ OJ L 201, 27.7.2012

meeting the agenda. Also any written material relevant to a college meeting should be circulated by the CCP's competent authority or a college member responsible for that material sufficiently in advance of a meeting so the college members have time to acquaint themselves with the content of such material. Members of the college should be able to suggest items to be included in the agenda. College members should receive the minutes of a college meeting and be given reasonable time to comment thereon.

- (6) While the frequency of college meetings should be determined by the CCP's competent authority, in order to ensure a proper operation of colleges and that a college meets on a regular basis, a meeting of the college should be held at least annually. College members may also request that a meeting of the college be held where they consider necessary.
- (7) While the details of the voting procedure of colleges are laid down in Article 19(3) of Regulation (EU) No 648/2012, there should be a possibility that a vote of a college is taken by written procedure where considered appropriate by the competent authority or where requested by a college member as a physical meeting of the college may not always be possible.
- (8) Article 18(1) of Regulation (EU) No 648/2012 attributes new responsibilities to colleges, including as regards outsourcing arrangements. The CCP's competent authority should therefore provide to college members information regarding changes in any outsourcing arrangements of major activities linked to risk management the CCP may have.
- (9) In addition, in order for the college to perform its duties, the CCP's competent authority should also provide to college members information regarding changes in the CCP's participation requirements, clearing membership models and account segregation models, regarding changes in the CCP's default management procedures, and reports on the CCP's test of its default management procedures conducted in accordance with Article 19(2) of Regulation (EU) No 648/2012, and regarding changes in the CCP's payment and settlement arrangements.
- (10) In order to protect confidential information, the transmission of such information between college members should be done by secure means of communication. College members should be informed on an equal basis.
- (11) The report referred to in Article 21(4) of Regulation EU No 648/2012 should be submitted to college members within an appropriate timescale to allow necessary time to its consideration. College members should be entitled to raise any points of interest or concern regarding the competent authority's review or evaluation.
- (12) Delegated Regulation (EU) No 876/2013 should therefore be amended accordingly.
- (13) 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 EMIR, in accordance with Article 10(1) of Regulation (EU) No 1095/2010, 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.

- (14) This Regulation is based on draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission following consultation of the European System of Central Banks.

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 2, the following paragraph is added after paragraph 4:

‘4a. Where a competent authority of a clearing member referred to in point (ca) of Article 18(2) of EMIR or a central bank of issue referred to in point (i) of Article 18(2) of EMIR wishes to participate in the college, it shall submit its request to the competent authority of the CCP justifying its request. The CCP’s competent authority shall respond to the requesting competent authority or central bank within 20 calendar days of the receipt of the request either consenting to or rejecting the request. Where the CCP’s competent authority does not grant the request, it shall also provide full and detailed reasons in writing. Where the CCP’s competent authority grants the request, it shall provide the requesting competent authority or central bank with a copy of the written agreement for their review and approval.’

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

‘4. Where an authority has the right to participate in the college under more than one of points (c) to (i) of Article 18(2) of Regulation (EU) No 648/2012, it may nominate additional participants who shall have no voting rights.’

3. In Article 3, the following paragraph is added after paragraph 5:

‘6. Where the ECB is a member of the college pursuant to both points (c) and (h) of Article 18(2) of Regulation (EU) No 648/2012, the provisions of paragraphs 4 and 5 shall not apply and the ECB can have two participants, both with voting rights.’

4. In Article 4(4), the following sub-paragraphs are added after the first sub-paragraph:

‘With reference to point (b) above, the CCP’s competent authority 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 allow 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 and distributed by the CCP's competent authority to college members sufficiently in advance of a meeting of the college. Similarly, the CCP's competent authority as well as other college members shall endeavour to distribute any written material to be considered at a meeting of the college sufficiently in advance of the meeting.

With reference to point (c) above, minutes of meetings shall be distributed to college members by the CCP's competent authority in due course following a meeting of the college. Such minutes shall be subject to comments by college members for a reasonable period of time.'

5. In Article 4, the following sub-paragraph is added after the first sub-paragraph of paragraph 5:

'College members may request that a meeting of the college be held by informing the CCP's competent authority of such request. Where the CCP's competent authority does not consider that a meeting of the college is necessary, the CCP's competent authority shall respond to the requesting college member with an explanation of the reason for not considering that a meeting of the college is necessary.'

6. In Article 4, the following paragraph is added after paragraph 7:

'8. Where considered appropriate by the CCP's competent authority, or where requested by a college member, a vote may be taken by written procedure on a proposal from the CCP's competent authority circulated to the college.'

7. In Article 5, the chapeau of paragraph 2 is replaced by the following:

'2. The CCP's competent authority shall at least provide the following information to the college members.'

8. In Article 5, the following points is added in paragraph 2 after point (q):

(r) changes in any outsourcing arrangements of major activities linked to risk management the CCP may have.'

(s) changes in the CCP's participation requirements, clearing membership models and account segregation models;

(t) changes in the CCP's default management procedures, and reports on the CCP's test of its default management procedures conducted in accordance with Article 49(2) of EMIR;



(u) changes in the CCP's payment and settlement arrangements.'

9. In Article 5, the second sub-paragraph of paragraph 4 is replaced by the following:

'The risk assessment report to be prepared by a CCP's competent authority in accordance with Article 19(1) 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 it if required.'

10. In Article 5, the following paragraph is added after paragraph 5:

'5. The transmission of confidential information between college members shall be done by secure means of communication. College members shall always be informed on an equal basis.'

11. The following Article is inserted after Article 5:

'Article 5a

Review and evaluation

1. The report to be prepared at least annually by a CCP's competent authority in accordance with Article 21(4) 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 and discuss it if required.

2. A college member shall be entitled to raise any points of interest or concern it has with regard to the CCP's competent authority's review or evaluation. The CCP's competent authority shall endeavour to take into account these views to the extent possible and provide feedback to the relevant college member on how its views have been taken on board.'

Article 2

Entry into force

This Regulation shall enter into force on the third 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



3.1 Annex II – 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 comments.