

Valdis Dombrovskis
Vice-President for Euro and Social
Dialogue and in charge of Financial
Stability, Financial Services and the
Capital Markets Union
European Commission
Rue de la Loi / Wetstraat 200
B - 1049 Brussels

Ref: ESMA views on third country regimes within its remit

Dear Vice-President Dombrovskis,

In the past months, the European Commission has suggested possible improvements in the way the European Union (EU) deals with third countries in the area of financial services. Such areas of improvement include: i) access to information, and ii) timely identification of changes in third-country legal and regulatory frameworks, practices or infrastructures and supervisory approaches. They have been identified in publications such as the Capital Markets Union (CMU)¹ mid-term review, the review of the operations of the European Supervisory Authorities (ESAs)² and the Staff Working Document on the equivalence decisions in financial policy³.

We agree with the European Commission that these areas should be strengthened to avoid un-level playing fields, regulatory arbitrage and to ensure financial stability and investor protection in the European Union (EU).

With the United Kingdom (UK) leaving the EU, a significant number of market infrastructures and the corresponding activity will be located outside the EU, whilst they will remain of the utmost importance for EU financial markets. This reinforces the need to build the CMU and increases the importance of third country issues for EU financial markets.

In this context, ESMA takes note of the European Commission's proposal (the proposal) dated 13 June 2017⁴ for a regulation amending Regulation (EU) No 648/2012 (EMIR⁵) specifically as

¹ [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.

² https://ec.europa.eu/info/sites/info/files/2017-esas-operations-consultation-document_en.pdf

³ https://ec.europa.eu/info/sites/info/files/eu-equivalence-decisions-assessment-27022017_en.pdf

⁴ https://ec.europa.eu/info/law/derivatives-emir-regulation-eu-no-648-2012/upcoming_en

⁵ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32012R0648>



regards the requirements for the recognition of third country central counterparties (CCPs), which strengthens the third country CCP regimes.

We believe that enhancing the implementation and monitoring of the equivalence decisions on third country regimes by providing the ability to the Commission to set specific conditions, and regular monitoring of the relevant third country regulatory and supervisory framework by ESMA, as suggested in the proposal, represents a significant improvement.

Furthermore, depending on the risks posed by third country entities, it is important to have the possibility of supervision at EU level, to ensure efficient and effective supervision and meeting the objectives of investor protection and stable EU financial markets. For example, the proposal suggests to empower ESMA with the task to classify third country CCPs depending on the risk they represent for the EU and subjecting the most systemically important CCPs to full compliance with EMIR and ESMA supervision and enforcement on an on-going basis. As part of the reinforcement of ESMA's powers, the usual supervisory and enforcement tools are foreseen such as on-site inspection, direct request for information and the possibility to impose fines and penalties. Furthermore, the European Commission recognised the corresponding human and financial resources for ESMA to implement the new scheme.

Considering the impact of the UK's withdrawal from the EU and the associated emergence of certain third country entities with a potential impact on EU financial stability and investor protection, we would like to invite the European Commission to consider whether similar proposals should be considered for other market infrastructures and key market players. In line with our response to the public consultation on the operations of the ESAs⁶, this should, in ESMA's view, include third country regimes for credit rating agencies, trade repositories, benchmarks, and possibly trading venues, and data providers.

ESMA stands ready to provide its technical expertise to the European Commission to help defining in more detail the criteria to determine the different risk categories for each type of entity and the corresponding regimes for each category.

We remain at your disposal to discuss with the European Commission Services the content of this letter and assist in the development of any proposals that may come forward.

Yours sincerely,

signed

Steven Maijor

cc: Olivier Guersent, Director-General, DG FISMA

⁶ <https://www.esma.europa.eu/file/22273/download?token=Ok8j3dRi>