|  |
| --- |
| 23 October 2020 |

|  |
| --- |
| Response form for the Consultation Paper on RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR |
|  |

|  |
| --- |
| Date: 23 October 2020 |

Responding to this paper

ESMA invites responses to the questions set out throughout its Consultation Paper on RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR.

Responses are most helpful if they:

* respond to the question stated;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all responses received by 16 November 2020.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the present response form.
* Please do not remove tags of the type <ESMA\_QUESTION\_RTS1549\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_RTS1549\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_RTS1549\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations”

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Data protection”.

Who should read the Consultation Paper

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from central counterparties (CCPs) and clearing members.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | KELER CCP Ltd. |
| Activity | Central Counterparty |
| Are you representing an association? |  |
| Country/Region | Hungary |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_RTS1549\_1>

KELER CCP appreciates the opportunity to provide feedback to the ESMA Consultation Paper “Regulatory technical standards on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR” (hereinafter: “The consultation paper”).

First of all we would like to highlight that based on our understanding the original objective of introducing the regulatory technical standards (specifying the process and exact conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation on whether or not those conditions are met, and specifying the conditions under which changes to the models and parameters are significant and therefore require validation by the National Competent Authority (NCA) and ESMA) **was to establish a transparent, and standard approval process, as well as a rapid and well-defined response time and capability for the whole market.**

We believe that the proposed technical standard is strongly needed to establish a common Union supervisory culture, consistent supervisory practices, as well as standardised / uniform procedures and consistent approaches throughout the Union, however in our opinion the proposed regulation (in its current form) ***unfortunately does not reach its aim, as seemingly the defined procedure has not become clearer neither is more transparent then the current legislation***.

In our view, in its current form it would not improve the transparency and standardisation of the procedures, rather - it would increase complexity and expectedly the duration of the process to approve the extension of products and services and changes to risk models as well.

**Comment 1.): Clear distinction between the proposed conditions (clear and transparent)**

In our view the proposed criteria and indicators are very difficult to distinguish and both could basically lead to the same consultation process.

Based on our experiences such definitions might be easily understood differently by different parties involved, and such complication would leave market participants in uncertainty whether or not a respective change would be grouped under one or the other procedure.

As ***EMIR clearly requires CCPs to be able to adapt their risk assessments quickly to incorporate new or emerging risks appears in several cases***, for this reason KELER CCP proposes to establish two perfectly defined category, but not based on criteria and indicators as it is stated in the proposed text. However based on the fact, that

* whether the CCP needs to react quickly for the market events or detect an error and should correct it immediately (Category 1) – in this case immediate application of the modifications is possible based on the decision of the NCA, before or without College and ESMA procedures

and

* whether the CCP is driven by its business consideration (Category 2)- which can go through under the whole approval procedure before application.

For these two categories the ***precise steps of approval process*** shall be defined with exact deadlines and response times as well.

It is very important to emphasize, that in case of Category 1, the necessary steps can be realized immediately under NCA permission, because in those stress situations, there is no time to wait for the laborious procedures that may take substantial amounts of time. Reacting to disadvantageous market phenomenon or correcting a mistake always needs action in time.

**Comment 2.) Missing deadlines and timeframe of the procedure**

KELER CCP considers that based on the proposed text, the process regarding the consultation between the College and NCA is extremely long and complicated in both cases.

Furthermore unfortunately the consultation paper does not specify an exact and efficient timeframe for the

the process of determining whether an extension of activities or services is subject to Article 15 and whether a change to the models and parameters is significant in line with Article 49. KELER CCP believes that in line with the EMIR provisions, a specific and efficient timeline must be developed and most importantly enforced. A failure to do this could result in CCPs not being able to offer increased risk management possibilities in due course.

The current proposal (without such exact process time, end-to-end deadlines and response times) would mean that CCPs would not be able to answer quickly to market needs, their flexibility in implementing changes (in line with the development of markets, and customer needs) would decrease. Also adherence to increased risk management expectations (e.g. further development of the CCPs risk management framework) could be hindered due to lengthy and not clear approval process.

KELER CCP believes that the proposed approach unnecessarily increases ‘time-to-market' of new risk management products and models as more actors are involved without a particular governance and, very importantly, without any defined timing. This means that when a CCP proposes a new product to be brought to the market, the proposed approach could indefinitely postpone its approval, potentially leading to a fading of the momentum of market demand. This would have the unfortunate and paradoxical consequence of decreasing, rather than increasing the possibilities to enhance risk management at CCPs.

For this reason KELER CCP recommends to specify an exact timeframe, deadlines and exacts steps and requirements at the same time ensure the transparency of the process (and completed steps) and consistency between the RTS and EMIR 2.2 regarding the provisions of the procedural time.

In order to ensure a harmonized application of the regulation and ensure the level playing field, KELER CCP is concerned that an exact definition should be provided for the below part of the proposed regulatory technical standard (“sufficient time”) (ie. 1 month):

*“Article 4*

*1).. The CCP’s competent authority shall give* ***sufficient time*** *to the members of the college to express their views on whether the CCP’s proposed extension of its activities or services fulfils any of the criteria set out in Article 2.*

*3)…****Sufficient time*** *for discussions between college members shall be provided.”*

Article 5

2) *The CCP’s competent authority shall give* ***sufficient time*** *to the members of the college to express their views on the CCP’s competent authority’s initial analysis of whether the conditions for an extension of authorisation are met by the CCP’s proposed change.”*

*3) ….* ***Sufficient time*** *for discussions between the members of the college shall be provided. Members of the college shall explain any dissenting views in detail.*

*Article 9*

*1) ... The CCP’s competent authority shall give* ***sufficient time*** *to the members of the college to express their views on whether the CCP’s proposed change fulfils any of the criteria set out in Article 7.*

3) … ***Sufficient time*** for discussions between college members shall be provided.

*Article 10*

*2)The CCP’s competent authority shall give* ***sufficient time*** *to the members of the college to express their views on the CCP’s competent authority’s initial analysis of whether the conditions for significant changes to CCP’s models and parameters are met by the CCP’s proposed change.*

*3)* *…* ***Sufficient time*** *for discussions between college members shall be provided. Members of the college shall explain any dissenting views in detail.”*

**Comment 3.): Competence of NCA and cooperation between the authorities**

KELER CCP understands the current text in a way, that a College consultation is needed every time, however the proposed text also says, that if NCA assesses that both a criterion/criteria and an indicator/indicators have been fulfilled by the CCP’s proposed extension of its activities and services, then only one college consultation in respect of the criteria shall be conducted (i.e. there will not be two separate college consultations).

Therefore in our view the “involvement of the College view in the approval decision” is again not fully clear, and it could again lead to an extension of the whole process (without giving the parties exact deadlines and tasks to perform in the process.)

As we mentioned earlier, KELER CCP finds it crucial to define clear timeframe and exact responsibilities for NCAs and College to ensure effectiveness and transparency.

Furthermore KELER CCP believes that NCAs should be able to make decisions at their own discretion, if certain, obvious criteria are triggered and conditions are met.

<ESMA\_COMMENT\_RTS1549\_1>

1. Do you agree with ESMA’s proposed approach to divide conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation (under Article 15 of EMIR) into criteria, which would be subject to a more simplified college consultation procedure, and into indicators, which would be subject to a more extensive college consultation procedure, or would you propose a different approach? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_1>

In our view the proposed criteria and indicators are very difficult to distinguish and both could basically lead to the same consultation process.

Based on our experiences such definitions might be easily understood differently by different parties involved, and such complication would leave market participants in uncertainty whether or not a respective change would be grouped under one or the other procedure.

As ***EMIR clearly requires CCPs to be able to adapt their risk assessments quickly to incorporate new or emerging risks appears in several cases***, for this reason KELER CCP proposes to establish two perfectly defined category, but not based on criteria and indicators as it is stated in the proposed text. However based on the fact, that

* whether the CCP needs to react quickly for the market events or detect an error and should correct it immediately (Category 1) – in this case immediate application of the modifications is possible based on the decision of the NCA, before or without College and ESMA procedures

and

* whether the CCP is driven by its business consideration (Category 2)- which can go through under the whole approval procedure before application.

For these two categories the ***precise steps of approval process*** shall be defined with exact deadlines and response times as well.

It is very important to emphasize, that in case of Category 1, the necessary steps can be realized immediately under NCA permission, because in those stress situations, there is no time to wait for the laborious procedures that may take substantial amounts of time. Reacting to disadvantageous market phenomenon or correcting a mistake always needs action in time.

.

<ESMA\_QUESTION\_RTS1549\_1>

1. Do you agree with ESMA’s proposed list of criteria for an extension of authorisation (under Article 15 of EMIR) or would you propose to change/add/delete any of the criteria or specify certain criteria further? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_2>

As indicated in our response to question 1, KELER CCP does not agree with ESMA’s proposed list of criteria for an extension of authorisation (under Article 15 of EMIR).

<ESMA\_QUESTION\_RTS1549\_2>

1. Do you agree with ESMA’s proposed list of indicators for an extension of authorisation (under Article 15 of EMIR) or would you propose to change/add/delete any of the indicators or specify certain indicators further? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_3>

KELER CCP does not understand why would an extension of authorisation be needed , if ” *the CCP’s proposed new activity or service will result in the CCP needing to adapt its operational or organisational structure, at any point in the contract cycle, to default management, settlement, etc., including: (Article 3 (b))”*KELER CCP considers that in this case an extension of authorisation is not needed when a new proposed activity or service will result in the CCP needing to adapt its organisational structure only, for this reason we propose to delete it.

The proposed new wording would be:

the CCP’s proposed new activity or service will result in the CCP needing to adapt its operational ~~or organisational~~ structure, at any point in the contract cycle, to default management, settlement, etc., including…

If there is a specific case, please define it clearly for a common understanding.

<ESMA\_QUESTION\_RTS1549\_3>

1. : Would you change certain criteria into indicators or vice-versa (under Article 15 of EMIR)? Please provide reasons for your answer

<ESMA\_QUESTION\_RTS1549\_4>

KELER CCP proposes that Article 2 (c) “*the CCP intends to offer a new settlement or delivery mechanism or service which involves establishing link with a different securities settlement system, CSD or payment system which the CCP did not previously use;”* should belong to Article 7 Criteria for significant changes to CCP’s models and parameters, because this element is not part of the original authorization of the CCP, for this reason does not constitute an extension, even if a CCP would extend its lists of settlement bank (cooperation with a new settlement bank) in current model.

Furthermore KELER CCP proposes that Article 2 (d) “*the CCP intends to offer a service or perform an activity for contracts referencing a new currency or involving a payment in a new currency, when the CCP did not previously clear any contracts in the new currency or when the CCP was previously clearing the same contracts in a single currency.”* should also belong to Article 7 Criteria for significant changes to CCP’s models and parameters, because this element is also not part of the original authorization of the CCP, for this reason does not constitute an extension.<ESMA\_QUESTION\_RTS1549\_4>

1. Do you agree with ESMA’s proposed procedures for consulting the college (under Article 15 of EMIR) or would you propose different procedures? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_5>

KELER CCP considers the proposed procedure is too long and complicated as it is mentioned in the general comment.

<ESMA\_QUESTION\_RTS1549\_5>

1. Do you agree with ESMA’s proposed approach to divide conditions under which changes to the models and parameters are significant (under Article 49 of EMIR) into criteria, which would be subject to a more simplified college consultation procedure, and indicators, which would be subject to a more extensive college consultation procedure, or would you propose a different approach? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_6>

In our view the proposed criteria and indicators are very difficult to distinguish and both could basically lead to the same consultation process.

Based on our experiences such definitions might be easily understood differently by different parties involved, and such complication would leave market participants in uncertainty whether or not a respective change would be grouped under one or the other procedure.

As ***EMIR clearly requires CCPs to be able to adapt their risk assessments quickly to incorporate new or emerging risks appears in several cases***, for this reason KELER CCP proposes to establish two perfectly defined category, but not based on criteria and indicators as it is stated in the proposed text. However based on the fact, that

* whether the CCP needs to react quickly for the market events or detect an error and should correct it immediately (Category 1) – in this case immediate application of the modifications is possible based on the decision of the NCA, before or without College and ESMA procedures

and

* whether the CCP is driven by its business consideration (Category 2)- which can go through under the whole approval procedure before application.

For these two categories the ***precise steps of approval process*** shall be defined with exact deadlines and response times as well.

It is very important to emphasize, that in case of Category 1, the necessary steps can be realized immediately under NCA permission, because in those stress situations, there is no time to wait for the laborious procedures that may take substantial amounts of time. Reacting to disadvantageous market phenomenon or correcting a mistake always needs action in time.

.<ESMA\_QUESTION\_RTS1549\_6>

1. Do you agree with ESMA’s proposed list of criteria for significant changes to the models and parameters (under Article 49 of EMIR) or would you propose to change/add/delete any of the criteria or specify certain criteria further? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RTS1549\_7>

1. Do you agree with ESMA’s proposed list of indicators for significant changes to the models and parameters (under Article 49 of EMIR) or would you propose to change/add/delete any of the indicators or specify certain indicators further? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RTS1549\_8>

1. Would you change certain criteria into indicators or vice-versa (under Article 49 of EMIR)? Please provide reasons for your answer.

<ESMA\_QUESTION\_RTS1549\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RTS1549\_9>

1. Do you agree with ESMA’s proposal to extend the consultation with the college also to Article 49? Do you agree with the proposed procedures for consulting the college or would you propose different procedures? Please provide reasons for your answer.?

<ESMA\_QUESTION\_RTS1549\_10>

KELER CCP considers the proposed procedure is too long and complicated as it is mentioned in the general comments

<ESMA\_QUESTION\_RTS1549\_10>