



European Securities and
Markets Authority

Final Report

Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for
Financial Market Infrastructures in respect of Central Counterparties





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Table of Contents

I. Executive Summary	3
II. Introduction	3
III. Reasons for issuing these Guidelines and Recommendations without public consultation	5
ANNEX I – Cost-benefit analysis	7
ANNEX II – Guidelines and Recommendations	9



Acronyms Used

Basel III	Basel Committee on Banking Supervision, Capital Requirements for bank exposures to central counterparties, April 2014 (http://www.bis.org/publ/bcbs282.pdf).
CCPs	Central Counterparties
Competent Authority	The authority designated by each Member State in accordance with Article 22 of EMIR. ESMA is responsible for maintaining on its website the following list of the competent authorities designated in accordance with Article 22 of EMIR. This list is available at: http://www.esma.europa.eu/page/Competent-authorities-responsible-authorisation-and-supervision-central-counterparties-CPPs
CPSS-IOSCO	Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions
EMIR	Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”.
ESMA	European Securities and Markets Authority
ESMA Regulation	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
PFMIs	CPSS-IOSCO Principles for financial market infrastructure, April 2012 (http://www.bis.org/publ/cpss101a.pdf).
RTS	Regulatory Technical Standards



I. Executive Summary

Reasons for publication

This paper contains Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructure¹ (PFMIs) by competent authorities as part of the exercise of their duties resulting from EMIR for the authorisation and supervision of CCPs pursuant to Article 22(1) of EMIR.

Guidelines and Recommendations set out ESMA's view of how Union law should be applied in a particular area, or of appropriate supervisory practices within the European System of Financial Supervision. ESMA expects all competent authorities designated under Article 22 of EMIR for carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs to comply with these Guidelines and Recommendations.

Contents

This report discusses the rationale for issuing these Guidelines and Recommendations regarding the implementation of the PFMIs in respect of CCPs. It includes Guidelines and Recommendations regarding the implementation of the PFMIs by competent authorities as part of the exercise of their duties resulting from EMIR for the authorisation and supervisions of CCPs.

Given that the Guidelines and Recommendations have limited impact on market participants, ESMA has consulted only competent authorities when drafting these Guidelines and Recommendations and has decided that, given the necessity to articulate the implementation of the PFMIs by competent authorities as soon as possible, it is not appropriate to conduct a public consultation.

Next steps

These Guidelines and Recommendations will apply after their publication by ESMA on its website in the EU official languages.

Competent authorities should comply with the Guidelines and Recommendations. Competent authorities must notify ESMA whether they comply or intend to comply with these Guidelines and Recommendations, including with a justification of the reasons for any non-compliance, within two months of publication by ESMA on its website of the final Guidelines and Recommendations in all EU official languages. Financial market participants are not required to report to ESMA whether they comply with these Guidelines and Recommendations, as they are not addressed to them.

II. Introduction

1. Following the adoption of the PFMIs in 2012, CPSS-IOSCO has begun a process of assessing their implementation. At present an assessment is taking place of the EU's implementation of the PFMIs.
2. This assessment involves a detailed review of the EU's regulatory framework to ascertain whether it establishes requirements which are consistent with each of the 22 'Principles' and 106 'Key

¹ CPSS-IOSCO Principles for financial market infrastructure, April 2012 (<http://www.bis.org/publ/cpss101a.pdf>). The PFMIs consist of 24 Principles, and 5 Responsibilities. For each Principle there are a series of Key Considerations that further explain the headline standard. There are 115 Key Considerations in total

Considerations' applicable to CCPs. For each of the Principles the EU will be graded as either: consistent, broadly consistent, partly consistent or not consistent.

3. While EMIR and the RTS made under it establish requirements which are consistent with the PFMI, the regulatory framework under EMIR does not always employ the same operative language as used in the PFMI. ESMA is concerned that differences between the operative language used in the EMIR framework and the operative language used in the PFMI might prevent the EU from being graded as having consistently implemented the PFMI in respect of CCPs.
4. This would be an unfortunate outcome given that the legislator (in respect of the EMIR regulation) and ESMA (in respect of the draft RTS it submitted to the Commission under EMIR) both intended for the EU regulatory framework for CCPs to consistently implement the PFMI, and competent authorities have already been applying the PFMI in their supervision of CCPs. This is confirmed in Recital 90 of EMIR which recalls the importance of ensuring international convergence of requirements for CCPs, that EMIR is intended to follow the international standards developed by CPSS-IOSCO, and that ESMA should consider the international standards of CPSS-IOSCO when drawing up the RTS as well as the guidelines and recommendations foreseen by EMIR.
5. While the legislator and ESMA both intended for the EU regulatory framework for CCPs to consistently implement the PFMI, and competent authorities have already been applying the PFMI in their supervision of CCPs, this is not currently articulated in a manner that can be referenced by CPSS-IOSCO as part of their assessment of the EU's implementation of the PFMI in respect of CCPs. ESMA considers the adoption of a Guideline and Recommendation under Article 16 of the ESMA Regulation to be an appropriate means of doing so.
6. If the difference between the operative language used in the EMIR framework and the operative language used in the PFMI were to prevent the EU from being graded as having consistently implemented the PFMI in respect of CCPs then there might be serious consequences for CCPs established in the EU (EU CCPs). In particular, Basel III requires that where an external assessment has identified that the regulatory requirements to which a CCP is subject have not consistently implemented the PFMI in respect of CCPs, and the authorities in that jurisdiction have not since publicly addressed the issues identified, then banks might have to hold additional capital against their exposures to such CCPs². This is not an issue for banks established in the EU because under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms ('CRR') the capital required to be held by a bank against its exposures to CCPs is driven by whether or not the CCP is authorised or recognised under EMIR³. However, if banks established in third-country jurisdictions have to hold additional capital against their exposures to EU CCPs because of differences between the operative language used in the EMIR framework and the operative language used in the PFMI, then EU CCPs could be put at a competitive disadvantage to their international peers despite in practice being held to regulatory requirements which consistently implement the PFMI.
7. Furthermore, in some third country jurisdictions the framework under which an EU CCP can qualify to offer its services to clearing members and trading venues established in that third country relies on the EU CCP being subject to regulatory requirements which are consistent with the PFMI. It would place EU

² Basel Committee on Banking Supervision, Capital requirements for bank exposures to central counterparties, April 2014 (<http://www.bis.org/publ/bcbs282.pdf>).

³ See Article 4, indent 88 of CRR

CCPs at a further competitive disadvantage if they were not able to obtain permission to operate in various third-countries because of differences between the operative language used in the EMIR framework and the operative language used in the PFMIIs despite in practice being held to regulatory requirements which consistently implement the PFMIIs.

8. ESMA considers that either of these outcomes would be unfortunate given that the legislator and ESMA both intended for the EU regulatory framework for CCPs to consistently implement the PFMIIs, and competent authorities have already been applying the PFMIIs in their supervision of CCPs.
9. Pursuant to Article 16(2) of the ESMA Regulation, ESMA should, where appropriate, conduct open public consultations regarding Guidelines and Recommendations and analyse the related potential costs and benefits. This report specifies why it was considered appropriate to issue these Guidelines and Recommendations without public consultation.
10. One essential element for the drafting of Guidelines and Recommendations is the analysis of the costs and benefits that the proposed measures might entail. This report includes an impact assessment in Annex I.
11. These Guidelines and Recommendations are issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation, competent authorities must make every effort to comply with the Guidelines and Recommendations.

III. Reasons for issuing these Guidelines and Recommendations without public consultation

12. Pursuant to Article 16(2) of the ESMA Regulation, ESMA should, where appropriate, conduct open public consultations regarding Guidelines and Recommendations and analyse the related potential costs and benefits.
13. As highlighted in the introductory section, an assessment is currently taking place of the EU's implementation of the PFMIIs and ESMA is concerned that differences between the operative language used in the EMIR framework and the operative language used in the PFMIIs might prevent the EU from being graded as having consistently implemented the PFMIIs in respect of CCPs. The CPSS-IOSCO assessment will be finalised within a matter of weeks and therefore there is a short timeframe within which ESMA can inform that assessment by adopting this Guideline and Recommendation. That timeframe is not compatible with ESMA undertaking a public consultation on these Guidelines and Recommendations.
14. Furthermore, as already mentioned in section II, the legislator and ESMA both intended for the EU regulatory framework for CCPs to consistently implement the PFMIIs. Therefore, these Guidelines and Recommendations will not introduce additional requirements for CCPs. The Guidelines and Recommendations are not addressed to CCPs themselves or to other stakeholders but to competent authorities, who have inputted into their preparation and have been duly consulted.
15. ESMA has also undertaken an analysis of the costs and benefits that these proposed Guidelines and Recommendations might entail and has concluded that the potential benefits outweigh the potential costs. ESMA's impact assessment is set out at Annex I.



16. Against this background, ESMA considers that it is appropriate not to hold an open public consultation on these Guidelines and Recommendations.

ANNEX I – Cost-benefit analysis

I. Introduction

1. The objective of performing a cost-benefit analysis is to assess the costs and benefits of the various policy or technical options which were analysed during the process of drafting the Guidelines and Recommendations. The Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties are specific in that they do not aim to prescribe further requirements for market participants, neither do they aim to revise the existing rules and regulations to which CCPs are subject.
2. Given that these Guidelines and Recommendations do not introduce additional requirements for CCPs, ESMA has not faced any technical choices while drafting these Guidelines and Recommendations. On this basis, the following cost-benefit analysis is exclusively qualitative and presents general considerations rather than providing detailed tables of technical choices and their relative advantages and disadvantages.

II. Potential costs of adopting this Guideline and Recommendation

3. EMIR and the RTS made under it establish requirements which consistently implement the PFMI. Furthermore, competent authorities have already been applying the PFMI in their supervision of CCPs. Therefore there should be no material additional compliance costs for market participants associated with these Guidelines and Recommendations.
4. The existing regulatory requirements to which CCPs are subject are set out in EMIR and the RTS promulgated under EMIR. The policy and technical choices involved in establishing these requirements were assessed by the Commission when presenting its proposal for EMIR⁴ and by ESMA when proposing its draft RTS⁵.

II. Potential costs of not adopting this Guideline and Recommendation

5. If differences between the operative language used in the EMIR framework and the operative language used in the PFMI were to prevent the EU from being graded as having consistently implemented the PFMI in respect of CCPs then there might be serious consequences for EU CCPs. In particular the Basel III requires that where an external assessment has identified that the regulatory requirements to which a CCP is subject have not consistently implemented the PFMI in respect of CCPs, and the authorities in that jurisdiction have not since publicly addressed the issues identified, then banks might have to hold additional capital against their exposures to such CCPs. In particular, instead of applying a risk weight to their default fund contributions determined according to a risk sensitive formula, banks would be required to apply a risk weight of 1250% to their default fund contributions. Furthermore the risk weight applied to the bank's trade exposures to the CCP would double from 2% to 4%.
6. This is not an issue for banks established in the EU because under CRR the capital required to be held by a bank against its exposures to CCPs is driven by whether or not the CCP is authorised or recognised under EMIR⁶. However, if banks established in third-country jurisdictions have to hold additional capital against their exposures to EU CCPs because of differences between the operative language used in the EMIR

⁴ http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/20100915_impact_assessment_en.pdf

⁵ http://www.esma.europa.eu/system/files/2012-600_annex_viii.pdf

⁶ See Article 4, indent 88 of CRR

framework and the operative language used in the PFMIIs, then EU CCPs could be put at a competitive disadvantage to their international peers despite in practice being held to regulatory requirements which consistently implement the PFMIIs.

7. Furthermore, in some third country jurisdictions the framework under which an EU CCP can qualify to offer its services to clearing members and trading venues established in that third country relies on the EU CCP being subject to regulatory requirements which are consistent with the PFMIIs. It would place EU CCPs at a further competitive disadvantage if they were not able to obtain permission to operate in various third-countries because of differences between the operative language used in the EMIR framework and the operative language used in the PFMIIs despite in practice being held to regulatory requirements which consistently implement the PFMIIs.
8. EU CCPs are already required to meet regulatory requirements which consistently implement the PFMIIs, and competent authorities have already been applying the PFMIIs in their supervision of CCPs. Therefore, no additional cost will be incurred by EU CCPs, competent authorities or other stakeholders following the adoption of these Guidelines and Recommendations.
9. Against this background, ESMA considers that the potential costs of not adopting these Guidelines and Recommendations to outweigh any potential costs of adopting the Guidelines and Recommendations.

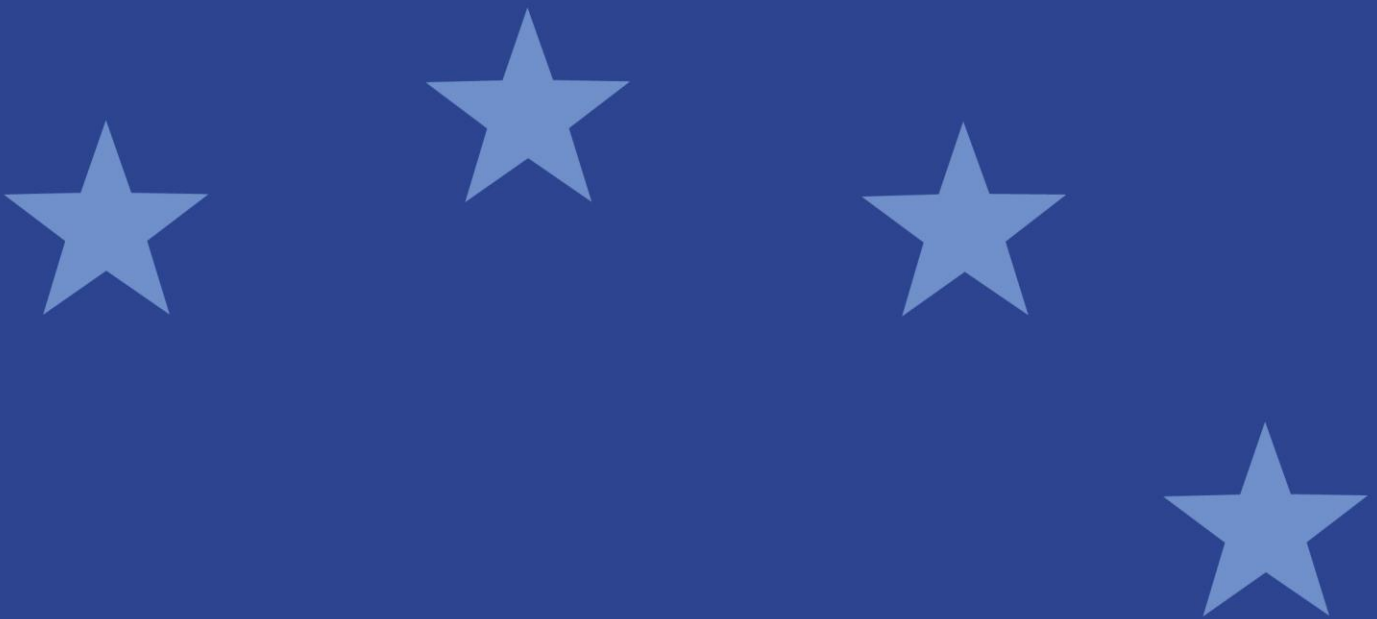


ANNEX II - Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties



Guidelines and Recommendations

Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for
Financial Market Infrastructures in respect of Central Counterparties





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Table of Contents

I. Scope	12
II. Purpose	12
III. Compliance and Reporting Obligations	13
IV. Guidelines and Recommendations	13



Acronyms Used

CCPs	Central Counterparties
Competent Authority	The authority designated by each Member State in accordance with Article 22 of EMIR. ESMA is responsible for maintaining on its website the following list of the competent authorities designated in accordance with Article 22 of EMIR. This list is available at: http://www.esma.europa.eu/page/Competent-authorities-responsible-authorisation-and-supervision-central-counterparties-CPPs
CPSS-IOSCO	Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions
EMIR	Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”.
ESMA	European Securities and Markets Authority
ESMA Regulation	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
PFMIs	CPSS-IOSCO Principles for financial market infrastructure, April 2012 (http://www.bis.org/publ/cpss101a.pdf).
RTS	Regulatory Technical Standards

I. Scope

Who?

1. These Guidelines and Recommendations apply to competent authorities designated under Article 22 of EMIR for carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs.

What?

2. These Guidelines and Recommendations concern the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructure⁷ (PFMIs) by competent authorities as part of the exercise of their duties resulting from EMIR for the authorisation and supervision of CCPs pursuant to Article 22(1) of EMIR.

When?

3. These Guidelines and Recommendations apply from [date to be included in the final version of this document following their publication by ESMA on its website in the official languages of the European Union].

II. Purpose

4. Following the adoption of the PFMIs in 2012, CPSS-IOSCO has begun a process of assessing their implementation. At present an assessment is taking place of the EU's implementation of the PFMIs.
5. This assessment involves a detailed review of the EU's regulatory framework to ascertain whether it establishes requirements which are consistent with each of the 22 'Principles' and 106 'Key Considerations' applicable to CCPs. For each of the Principles the EU will be graded as either: consistent, broadly consistent, partly consistent or not consistent.
6. While EMIR and the RTS made under it establish requirements which consistently implement the PFMIs, the regulatory framework under EMIR does not always employ the same operative language as used in the PFMIs. ESMA is concerned that differences between the operative language used in the EMIR framework and the operative language used in the PFMIs might prevent the EU from being graded as having consistently implemented the PFMIs in respect of CCPs.

⁷ CPSS-IOSCO Principles for financial market infrastructure, April 2012 (<http://www.bis.org/publ/cpss101a.pdf>). The PFMIs consist of 24 Principles, and 5 Responsibilities. For each Principle there are a series of Key Considerations that further explain the headline standard. There are 115 Key Considerations in total

7. This would be an unfortunate outcome given that the legislator (in respect of the EMIR regulation) and ESMA (in respect of the draft RTS it submitted to the Commission under EMIR) both intended for the EU regulatory framework for CCPs to consistently implement the PFMI, and competent authorities have already been applying the PFMI in their supervision of CCPs. This is confirmed in Recital 90 of EMIR which recalls the importance of ensuring international convergence of requirements for CCPs, that EMIR is intended to follow the international standards developed by CPSS-IOSCO, and that ESMA should consider the international standards of CPSS-IOSCO when drawing up the RTS as well as the Guidelines and Recommendations foreseen by EMIR.
8. While the legislator and ESMA both intended for the EU regulatory framework for CCPs to consistently implement the PFMI, and competent authorities have already been applying the PFMI in their supervision of CCPs, this is not currently articulated in a manner that can be referenced by CPSS-IOSCO as part of their assessment of the EU's implementation of the PFMI in respect of CCPs.
9. ESMA considers the adoption of a Guideline and Recommendation under Article 16 of the ESMA Regulation to be an appropriate way of doing so.

III. Compliance and reporting obligations

Status of the guidelines

10. This document contains Guidelines and Recommendations issued under Article 16 of the ESMA Regulation⁸. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices.

Reporting requirements

11. Competent authorities to whom these Guidelines and Recommendations apply must notify ESMA whether they comply or intend to comply with the Guidelines and Recommendations, with reasons for non-compliance, within two months of the date of publication by ESMA to post-trading@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

⁸ 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.

IV. Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties

GUIDELINE AND RECOMMENDATION ONE

(Article 22(1) of Regulation (EU) No 648/2012)

EMIR and the regulatory and implementing technical standards made under it establish requirements which are consistent with the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions (PFMIs). When carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs, competent authorities should ensure that CCPs established in their territory comply with these requirements in accordance with the PFMIs and operate in a manner that is consistent with them.