004370/EU XXVIII. GP
Eingelangt am 28/11/24

EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

Strasbourg, 27 November 2024
(OR. en)

2022/0403(COD)
LEX 2418

PE-CONS 41/1/24
REV 1

EF 68
ECOFIN 198
SURE 11
CODEC 512

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATIONS (EU) No 648/2012, (EU) No 575/2013 AND (EU) 2017/1131 AS REGARDS MEASURES TO MITIGATE EXCESSIVE EXPOSURES TO THIRD-COUNTRY CENTRAL COUNTERPARTIES AND IMPROVE THE EFFICIENCY OF UNION CLEARING MARKETS

www.parlament.gv.at

REGULATION (EU) 2024/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 November 2024

amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131
as regards measures to mitigate excessive exposures
to third-country central counterparties
and improve the efficiency of Union clearing markets

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure[3],

---

[1] OJ C 204, 12.6.2023, p. 3.
[2] OJ C 184, 25.5.2023, p. 49.
[3] Position of the European Parliament of 24 April 2024 (not yet published in the Official Journal) and decision of the Council of 19 November 2024.

www.parlament.gv.at

Whereas:

(1) Regulation (EU) No 648/2012 of the European Parliament and of the Council[4] contributes to the reduction of systemic risk by increasing the transparency of the over-the-counter (OTC) derivatives market and by reducing the counterparty credit and operational risks associated with OTC derivatives.

(2) Post-trade infrastructures are a fundamental aspect of the capital markets union and are responsible for a range of post-trade processes, including clearing. An efficient and competitive clearing system in the Union is essential for the functioning of Union capital markets and is a cornerstone of the financial stability of the Union. It is therefore necessary to lay down further rules to improve the efficiency of clearing services in the Union in general, and of central counterparties (CCPs) in particular, by streamlining procedures, especially for the provision of additional services or activities and for changing CCPs' risk models, by increasing liquidity, by encouraging clearing at Union CCPs, by modernising the framework under which CCPs operate, and by providing the necessary flexibility to CCPs and other financial actors to compete within the internal market.

---

[4] 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).

www.parlament.gv.at

(3) Union market participants need to have more options as regards access to safe and efficient clearing services. To attract business, CCPs must be safe and resilient. Regulation (EU) No 648/2012 lays down measures to increase the transparency of derivatives markets and mitigate risks through clearing and the exchange of margin. In that respect, CCPs play an important role in mitigating financial risks. Rules should therefore be laid down to further enhance the stability of Union CCPs, notably by amending certain aspects of the regulatory framework. In addition, and in recognition of Union CCPs' role in preserving the financial stability of the Union, it is necessary to strengthen further the supervision of Union CCPs, with particular attention to their role within the broader financial system and the fact that they provide cross-border services.

www.parlament.gv.at

(4) Central clearing is a global business and Union market participants are active internationally. However, since the adoption of amendments to Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs, concerns have been expressed repeatedly, including by the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[5], about the ongoing risks to the financial stability of the Union arising from the excessive concentration of clearing in some third-country CCPs, in particular due to the potential risks that can arise in stressed market conditions. In the short term, in order to mitigate the risk of cliff edge effects related to the withdrawal of the United Kingdom (UK) from the Union and the subsequent abrupt disruption of Union market participants' access to UK CCPs, the Commission adopted a series of equivalence decisions to maintain access to UK CCPs. However, the Commission called on Union market participants to reduce, in the medium term, their excessive exposures to systemic third-country CCPs. The Commission reiterated that call in its communication of 19 January 2021 entitled 'The European economic and financial system: fostering openness, strength and resilience'.

---

[5] 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 (OJ L 331, 15.12.2010, p. 84).

www.parlament.gv.at

The risks and effects of excessive exposures to systemic third-country CCPs were considered in the report published by ESMA in December 2021 following an assessment conducted pursuant to Article 25(2c) of Regulation (EU) No 648/2012. That report concluded that some services provided by systemically important UK CCPs were of such substantial systemic importance that the current arrangements under Regulation (EU) No 648/2012 were insufficient to manage the risks to the financial stability of the Union. To mitigate the potential financial stability risks to the Union due to the continued excessive reliance on systemic third-country CCPs, but also to enhance the proportionality of measures for third-country CCPs that present fewer risks to the financial stability of the Union, it is necessary to further tailor the framework introduced by Regulation (EU) 2019/2099 of the European Parliament and of the Council[6] to the risks presented by different third-country CCPs.

[6] Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ L 322, 12.12.2019, p. 1).

www.parlament.gv.at

(5) Regulation (EU) No 648/2012 exempts intragroup transactions from the clearing obligation and the margin requirements. To provide more legal certainty and predictability concerning the framework for intragroup transactions, the regime for equivalence decisions in Article 13 of Regulation (EU) No 648/2012 should be replaced by a simpler framework. Article 3 of Regulation (EU) No 648/2012 should therefore be amended to replace the need for an equivalence decision with a list of third countries for which an exemption should not be granted. In addition, Article 13 of Regulation (EU) No 648/2012 should be amended to provide for equivalence decisions only in relation to Article 11 of that Regulation. Since Article 382 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[7] refers to intragroup transactions within the meaning of Regulation (EU) No 648/2012, Article 382 of Regulation (EU) No 575/2013 should also be amended accordingly.

---

[7] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

www.parlament.gv.at

(6) Given the fact that entities that are established in third countries that have strategic deficiencies in their national anti-money laundering and counter terrorist financing regimes (‘high-risk third countries’), as referred to in Regulation (EU) 2024/1624 of the European Parliament and of the Council[8], or in third countries listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, are subject to a less stringent regulatory environment, their operations might increase the risk, including due to increased counterparty credit risk and legal risk, to the financial stability of the Union. Consequently, such entities should not be eligible to be considered in the framework of intragroup transactions.

---

[8] Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L, 2024/1624, 19.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1624/oj).

www.parlament.gv.at

(7) Strategic deficiencies in national regimes on anti-money laundering and counter terrorist financing or a lack of cooperation for tax purposes are not necessarily the only factors that can influence the risks, including counterparty credit risk and legal risk, associated with derivative contracts. Other factors, such as the supervisory framework, also play a role. The Commission should therefore be empowered to adopt delegated acts to identify the third countries whose entities are not permitted to benefit from intragroup exemptions despite those third countries not being identified as high-risk third countries or listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes. In light of the fact that intragroup transactions benefit from reduced regulatory requirements, regulators and supervisors should carefully monitor and assess the risks associated with transactions involving entities from third countries.

(8) To ensure a level playing field between Union and third-country credit institutions offering clearing services to pension scheme arrangements, an exemption from the clearing obligation under Regulation (EU) No 648/2012 should be introduced where a Union financial counterparty that is subject to the clearing obligation or a non-financial counterparty that is subject to the clearing obligation enters into a transaction with a pension scheme arrangement established in a third country which is exempted from the clearing obligation under that third country's national law.

www.parlament.gv.at

(9) Regulation (EU) No 648/2012 promotes the use of central clearing as the main risk-mitigation technique for OTC derivatives. The risks associated with an OTC derivative contract are therefore best mitigated when that OTC derivative contract is cleared by a CCP authorised or recognised under Regulation (EU) No 648/2012 (the ‘authorised or recognised CCP’). It follows that in the calculation of the position that is compared to the clearing thresholds specified pursuant to Article 10(4), point (b), of Regulation (EU) No 648/2012, only those OTC derivative contracts that are not cleared by an authorised or recognised CCP should be included in such calculation. In order to ensure that the current prudent coverage of the clearing obligation is not affected by the new methodology, it is appropriate to empower ESMA to also set an aggregate clearing threshold, if needed.

www.parlament.gv.at

(10) Post-trade risk reduction (PTRR) services reduce risks, such as credit risk and operational risk, of derivatives portfolios and are therefore a valuable tool for improving the resilience of the OTC derivatives market. They include services such as portfolio compression, portfolio optimisation and rebalancing services. PTRR service providers often use complex financial instruments to ensure that the transactions resulting from PTRR exercises are not subject to the clearing obligation. Doing so limits the usability and accessibility of PTRR services to advanced financial markets participants and reduces the benefits resulting from the use of PTRR services, as the use of complex products that are not subject to the clearing obligation increases risk in the financial system. Given the benefits of PTRR services, their use should be facilitated and made available to a wider group of market participants. Therefore, transactions resulting from PTRR services should be exempted from the clearing obligation. At the same time, to ensure the safe and efficient use of PTRR services, the exemption should be subject to appropriate conditions which are to be further specified and complemented by ESMA.

www.parlament.gv.at

(11) It is necessary to address the financial stability risks associated with excessive exposures of Union clearing members and clients to systemically important third-country CCPs (Tier 2 CCPs) that provide clearing services that have been identified by ESMA as clearing services of substantial systemic importance pursuant to Regulation (EU) No 648/2012. In December 2021, ESMA concluded that the provision of certain clearing services provided by two Tier 2 CCPs, namely for OTC interest rate derivatives denominated in euro, OTC interest rate derivatives denominated in Polish zloty, credit default swaps denominated in euro and short-term interest rate derivatives denominated in euro, are of substantial systemic importance for the Union or for one or more of its Member States. As noted by ESMA in its December 2021 assessment report, were those Tier 2 CCPs to face financial distress, changes to those CCPs' eligible collateral, margins or haircuts may negatively impact the sovereign bond markets of one or more Member States, and more broadly, the financial stability of the Union. Furthermore, disruptions in markets relevant for monetary policy implementation may hamper the transmission mechanism critical to central banks of issue. It is therefore appropriate to require financial counterparties and non-financial counterparties that are subject to the clearing obligation to hold, directly or indirectly, accounts and clear a representative number of transactions at Union CCPs. That requirement should contribute to a reduction in the provision of clearing services of substantial systemic importance by those Tier 2 CCPs. In light of recent market developments, in particular concerning credit default swaps denominated in euro, it is appropriate that the requirement only applies to OTC interest rate derivatives denominated in euro and in Polish zloty and short-term interest rate derivatives denominated in euro, in addition to any other clearing service deemed to be of substantial systemic importance in future assessments pursuant to Regulation (EU) No 648/2012.

www.parlament.gv.at

(12) The active account requirement should apply to financial and non-financial counterparties that are subject to the clearing obligation and exceed the clearing thresholds in any of the categories of derivative contracts identified by ESMA as being of substantial systemic importance. When verifying whether they are subject to the active account requirement, counterparties that are part of groups headquartered in the Union should take into account the derivative contracts belonging to clearing services of substantial systemic importance that are cleared by any entity within the group, including entities established in third countries, since those contracts might contribute to the excessive degree of exposure of the group as a whole. Derivative contracts of third-country subsidiaries of Union groups should also be included to prevent those groups from moving their clearing activities outside the Union in order to avoid the active account requirement. A counterparty that is subject to the active account requirement and that belongs to a group should be required to meet the representativeness obligation based on its own transactions. Third-country entities that are not subject to the clearing obligation under Union law are not subject to the obligation to maintain an active account.

www.parlament.gv.at

(13) The active account requirement is a new requirement. The novelty of the requirement and the need for market participants to gradually adapt to it should be properly taken into account. That is why it is appropriate that the active account requirement can be met by market participants by establishing permanently functional accounts at Union CCPs. The active account requirement should include operational elements. The account should be suitable for quickly clearing a significant number of trades moved out from a Tier 2 CCP and for clearing all new trades in the categories of derivative contracts identified as being of substantial systemic importance. Those operational elements should also contribute to incentivising counterparties to move trades to the Union. In that regard, it is appropriate to take into account the situation of counterparties that are already clearing a significant amount of their transactions in interest rate derivatives denominated in euro and Polish zloty, and in short-term interest rate derivatives denominated in euro, at Union CCPs. Those counterparties should not be subject to the operational requirements associated with the active account requirement.

www.parlament.gv.at

(14) In order to ensure that the active account requirement contributes to the overarching objective of reducing excessive exposures to clearing services of substantial systemic importance provided by third-country CCPs and that the account is not dormant, a minimum number of derivative contracts should be cleared in the active accounts. Those contracts should be representative of the different subcategories of derivative contracts belonging to clearing services of substantial systemic importance (the 'representativeness obligation'). The representativeness obligation should reflect the diversity of the portfolios of financial and non-financial counterparties subject to the active account requirement. Contracts with different maturities and different sizes should be cleared through the active accounts, as well as contracts of different economic nature, including all classes of interest rate derivatives that are subject to the clearing obligation under Commission Delegated Regulations (EU) 2015/2205[9] and (EU) 2016/1178[10] as regards those denominated in Polish zloty. To define the minimum number of derivative contracts that should be cleared through the active accounts, ESMA should identify up to three derivative classes amongst the derivative contracts belonging to the clearing services of substantial systemic importance.

[9] Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 314, 1.12.2015, p. 13).

[10] Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation (OJ L 195, 20.7.2016, p. 3).

www.parlament.gv.at

ESMA should further identify up to five most relevant subcategories of trades, per derivative class, based on a combination of size and maturity. Counterparties should then be required to clear at least five trades in the reference period in each relevant subcategory. The number of derivative contracts to be cleared should be at least five trades in the reference period on an annual average basis, meaning that in assessing whether counterparties fulfil the representativeness obligation, competent authorities should consider the total number of trades over a year. In order to ensure a proportionate approach and to avoid imposing an excessive burden on counterparties that have limited activity in the different subcategories of derivative contracts identified by ESMA, a de minimis threshold should apply to the representativeness obligation. In addition, the specific business model of Union pension scheme arrangements needs to be properly taken into account. In several cases, such arrangements have a limited number of interest rate derivatives trades, which are concentrated, long-term and with a high notional amount. That is why it is appropriate for a scaled-down representativeness obligation to be established, which should require one trade to be cleared instead of five in the most relevant subcategories per reference period. Member States should introduce appropriate periodic penalty payments for cases where a counterparty subject to the active account requirement fails to meet its obligations with regard to the operational criteria or the representativeness obligation.

www.parlament.gv.at

(15) ESMA has an important role in the assessment of the substantial systemic importance of third-country CCPs and their clearing services. By 18 months following the entry into force of this Regulation, or at any point in time in the case of a financial stability risk, ESMA should assess and report to the European Parliament, the Council and the Commission on the effects of this Regulation in reducing exposures to systemically important Tier 2 CCPs. ESMA should propose any measures it deems necessary, as well as quantitative thresholds, and accompany them with an impact assessment and a cost-benefit analysis. ESMA should cooperate with the European System of Central Banks (ESCB), the European Systemic Risk Board (ESRB) and the Joint Monitoring Mechanism established by this Regulation when drafting its assessment and report. Within six months of receiving the ESMA report, the Commission should prepare its own report which may be accompanied, where appropriate, by a legislative proposal.

www.parlament.gv.at

(16) With the aim of encouraging clearing in, and ensuring the financial stability of, the Union, and to ensure that clients are aware of their options and can take an informed decision as regards where to clear their derivative contracts, clearing members and clients that provide clearing services in both authorised or recognised CCPs should inform their clients of the option to clear a derivative contract through a Union CCP. The information provided should include information on all costs that will be charged to clients by clearing members and clients that provide clearing services. The information on costs that clearing members and clients that provide clearing services should disclose should be limited to the Union CCPs in relation to which they provide clearing services. The obligation to inform clients of the option to clear a derivative contract through a Union CCP is distinct from the active account requirement and is intended to apply more generally to ensure awareness of the clearing offer of Union CCPs.

(17) To ensure that competent authorities have the necessary information on the clearing activities undertaken by clearing members or clients in recognised third-country CCPs, a reporting obligation should be introduced for such clearing members or clients. The information to be reported should distinguish between securities transactions, derivative transactions on regulated markets and OTC derivative transactions. ESMA should provide details on the content and format of the information to be reported, and in doing so should ensure that the obligation does not create additional reporting requirements, unless necessary, so that the administrative burden for clearing members and clients is minimised.

www.parlament.gv.at

(18) Under the current framework, ESMA receives transaction data under Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365 of the European Parliament and of the Council[11], which provide a Union-wide view on markets but not on CCPs' risk management. ESMA should, therefore, in addition to such data, require timely and reliable information on CCPs' activities and practices to fulfil its financial stability mandate. Accordingly, a formal reporting requirement regarding CCP risk management data by Union CCPs to ESMA should be introduced. The introduction of such a requirement would also help to further strengthen standardisation and comparability across data and ensure that data are delivered periodically.

---

[11] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

www.parlament.gv.at

(19) The recent stress episodes in commodities markets have highlighted the importance of authorities having a comprehensive picture of the derivatives activities and exposures of non-financial counterparties that are subject to the clearing obligation. Non-financial counterparties subject to the clearing obligation that are part of a group whose intragroup transactions are exempt from the reporting obligation should have their derivatives positions reported by their Union parent undertaking on an aggregated basis. The reporting should be done on a weekly basis at entity level and should be broken down by type of derivatives. Such information should be provided to ESMA and the relevant competent authority of the individual entities in the group. It is also appropriate to consider the concerns raised by the supervisory community about the quality of the data reported by financial and non-financial counterparties pursuant to Regulation (EU) No 648/2012. Entities subject to the reporting obligation pursuant to Regulation (EU) No 648/2012 should therefore be required to exercise due diligence by establishing appropriate procedures and arrangements to ensure the quality of the data, before the data are submitted. ESMA should issue guidelines to further specify such procedures and arrangements, taking into account the possibility to apply the requirements in a proportionate manner. To ensure that the requirements on the quality of the data are fulfilled, Member States should adopt appropriate penalties where the data reported contain systematic manifest errors. ESMA should develop draft regulatory technical standards to specify what constitutes a systematic manifest error for the purposes of imposing those penalties. While entities have the possibility to delegate their reporting, they remain responsible in the event that the data being reported by the entity to which they have delegated their reporting are inaccurate or duplicative.

www.parlament.gv.at

(20) To ensure that competent authorities are at all times aware of exposures at entity and group level and are able to monitor such exposures, competent authorities should establish effective cooperation procedures to calculate the positions in contracts not cleared at an authorised or recognised CCP and to actively evaluate and assess the level of exposure in OTC derivative contracts at entity and group level. In order for ESMA to have an overall picture of the activity in OTC derivatives of non-financial counterparties established in the Union, as well as their parent undertakings, the authorities responsible for those non-financial counterparties and parent undertakings should report to ESMA on a regular basis. Such reporting should not replicate the information already submitted by means of other reporting requirements set out in Regulation (EU) No 648/2012, but instead provide information on the evolution of the portfolios of those non-financial counterparties between two reporting dates, as well as an assessment of the risks to which such counterparties might be exposed. Authorities responsible for non-financial counterparties that are part of a group should cooperate in order to minimise the reporting burden and assess the intensity and type of activity in OTC derivatives of those non-financial counterparties.

www.parlament.gv.at

(21) It is necessary to ensure that Commission Delegated Regulation (EU) No 149/2013[12], relating to the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risk, continues to be appropriate in light of market developments. It is also necessary to ensure that the clearing threshold values laid down in that Delegated Regulation properly and accurately reflect the different risks and characteristics in derivatives, other than interest rate, foreign exchange, credit and equity derivatives. ESMA should therefore also review and clarify, where appropriate, that Delegated Regulation and propose amendments if necessary. ESMA is encouraged to consider and provide, inter alia, more granularity for commodity derivatives. That granularity could be achieved by separating the clearing thresholds by sector and type, such as differentiating between agriculture, energy or metal related commodities or differentiating those commodities based on other features such as environmental, social and governance criteria, environmentally sustainable investments or crypto-related features. During the review, ESMA should endeavour to consult relevant stakeholders that have specific knowledge on particular commodities.

(22) Non-financial counterparties that exchange collateral for OTC derivative contracts not cleared by a CCP should have sufficient time to negotiate and test the arrangements to exchange such collateral.

---

[12] Commission Delegated Regulation (EU) No 149/2013 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 indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

www.parlament.gv.at

(23) In order to avoid market fragmentation and ensure a level playing field, and acknowledging the fact that in some third-country jurisdictions the exchange of variation and initial margin for single stock options and equity index options is not subject to equivalent margin requirements, the treatment of such products should be exempted from the requirement to have risk-management procedures regarding the timely, accurate and appropriately segregated exchange of collateral, as long as there is insufficient international convergence on their treatment. ESMA, in cooperation with the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[13] and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[14] (known collectively as 'ESAs'), should monitor regulatory developments in third-country jurisdictions and the development of exposures by counterparties subject to Regulation (EU) No 648/2012 in single stock options and equity index options not cleared by a CCP, and should report to the Commission on the results of such monitoring at least every three years. Where the Commission has received such a report, it should assess whether international developments have led to more convergence in the treatment of single stock options and equity index options and whether the derogation endangers the financial stability of the Union or of one or more of its Member States. In such a case, the Commission should be empowered to revoke the derogation regarding the treatment of single stock options and equity index options. In that way, it can be ensured that appropriate requirements are in place in the Union to mitigate counterparty credit risk in respect of such contracts while avoiding any scope for regulatory arbitrage.

---

13 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

14 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

www.parlament.gv.at

(24) In order to comply with the initial margin requirements set out in Regulation (EU) No 648/2012, a large number of Union market participants use industry-wide, pro forma initial margin models. Given that those models are used industry-wide, they are unlikely to be significantly modified by the preference of every single user or by the different assessments of every single competent authority that authorises the use of those models by the entities it supervises. In practice, since the same model is used by a large number of Union counterparties, the consequent need for that model to be validated by a plurality of competent authorities gives rise to a coordination problem. To address that problem, EBA should be given the task of operating as a central validator of such pro forma models. In its role as central validator, EBA should validate the elements and general aspects of those pro forma models, including their calibration, design, and coverage of instruments, assets classes, and risk factors. To assist its work, EBA should collect feedback from competent authorities, ESMA and EIOPA, and coordinate their collective views. Given that competent authorities would continue to be responsible for authorising the use of those pro forma models and for monitoring their implementation at the supervised entity level, EBA should assist competent authorities in their approval processes regarding the general aspects of the implementation of those pro forma models. In addition, EBA should serve as a single point of discussion with the industry to help ensure more effective Union coordination on the design of such models. Competent authorities will remain responsible for authorising the use of such models and for monitoring the implementation of those models at the supervised entity level.

www.parlament.gv.at

(25) Central banks, public bodies charged with or intervening in the management of the public debt, and public sector entities, are free to choose whether to use clearing services of CCPs to clear their derivatives contracts. Where they decide to use such services, they are encouraged to clear, in principle, through Union CCPs where the products sought are available. Given that the modalities of those entities' participation in CCPs vary across Member States and in view of diverging practices regarding the calculation of the exposures of those entities to Union CCPs and their contribution to the financial resources of those CCPs, further harmonisation of those aspects, by means of ESMA guidelines, would be desirable.

(26) EBA, in cooperation with ESMA and EIOPA, should draft regulatory technical standards to specify supervisory procedures ensuring the initial and ongoing validation of the risk-management procedures. To ensure proportionality, only financial counterparties that are most active in OTC derivatives not cleared by a CCP should be subject to the procedures specified in those regulatory technical standards.

www.parlament.gv.at

(27) To ensure a consistent and convergent approach amongst competent authorities throughout the Union, authorised CCPs or legal persons established in the Union that wish to be authorised under Regulation (EU) No 648/2012 to provide clearing services and activities in financial instruments should also be able to be authorised to provide clearing services and other activities in relation to non-financial instruments. Regulation (EU) No 648/2012 applies to CCPs as entities and not to specific services. When a CCP clears non-financial instruments in addition to financial instruments, the CCP's competent authority should be able to ensure that the CCP is in compliance with Regulation (EU) No 648/2012 for all services it offers.

www.parlament.gv.at

(28) Union CCPs face challenges in expanding their product offer for clearing services and experience difficulties in bringing clearing services for new products to the market. In view of such challenges and difficulties and in line with the objective of enhancing the attractiveness of the Union's clearing system, the process of authorising CCPs in the Union or extending the authorisation of CCPs should therefore be simplified and should include specific timelines, while ensuring the appropriate involvement of ESMA and the college of the Union CCP concerned. First, to avoid significant, and potentially indefinite, delays, an acknowledgment of the receipt of the application should be provided swiftly and the competent authorities should thereafter assess the completeness of an application for authorisation. To ensure that legal persons established in the Union that wish to be authorised as CCPs and Union CCPs wishing to extend their authorisations submit all required documents and information with their applications, ESMA should develop draft regulatory and implementing technical standards specifying which documents are to be provided, what information those documents are to contain and in which format they are to be submitted. When preparing the draft regulatory technical standards, ESMA should take into account existing documentation requirements and practices under Regulation (EU) No 648/2012 and streamline their submission where possible in order to avoid an excessive time to market and to ensure that the information to be provided by the CCP applying for an extension of authorisation is proportional to the materiality of the change for which the CCP applies, without making the overall process unduly complex, burdensome and disproportionate. Second, to ensure an efficient and concurrent assessment of applications, legal persons established in the Union that wish to be authorised as CCPs and Union CCPs wishing to extend their authorisations should be able to submit all documents via a central database. Third, a CCP's competent authority should, during the assessment period, coordinate and submit questions from that competent authority, ESMA or the college to the legal person established in the Union that wishes to be authorised as a CCP and Union CCPs wishing to extend their authorisations, to ensure a swift, flexible, and cooperative process for a comprehensive review. To avoid duplication and unnecessary delays, all questions and subsequent clarifications should also be shared simultaneously between the CCP's competent authority, ESMA and the college.

www.parlament.gv.at

(29) At present, there exists some uncertainty as to when an additional service or activity is covered by a CCP's existing authorisation. It is necessary to address that uncertainty and to ensure proportionality when the proposed additional service or activity not covered by a CCP's existing authorisation does not significantly increase the risks for the CCP. In such a case, the additional service or activity should not undergo the full assessment procedure, but instead benefit from an accelerated procedure. The accelerated procedure should not require a separate opinion from ESMA and the college since such a requirement would be disproportionate, but rather ESMA and the members of the college should provide input to the CCP's competent authority on the assessment of whether the extension qualifies as falling under the accelerated procedure. In order to ensure supervisory convergence, ESMA should develop draft regulatory technical standards to further specify the conditions for the application of the accelerated procedure as well as the procedure for providing its input and the input of the college.

www.parlament.gv.at

(30) To alleviate the administrative burden on CCPs and competent authorities, without modifying the overall risk profile of a CCP, CCPs should be able to implement extensions of services for business-as-usual changes without an authorisation, where a CCP considers that the proposed additional service or activity would not have a material impact on its risk profile, in particular where the new clearing service or activity is very similar to the services that the CCP is already authorised to provide. To enable CCPs to swiftly implement such business-as-usual changes, CCPs should be exempted from the procedures for authorisation of the extension of activities and services in relation to such changes. CCPs should notify the competent authority and ESMA where they decide to make use of such exemption. The competent authority should review the changes implemented in the context of its annual review and evaluation process.

(31) To ensure the consistent functioning of all colleges and to further enhance supervisory convergence, the college should be co-chaired by the national competent authority and any of the independent members of the CCP Supervisory Committee. To foster cooperation between ESMA and competent authorities, the co-chairs should jointly decide the dates of the college meetings and establish the agenda of such meetings. However, to ensure consistent decision making and that the CCP's competent authority remains ultimately responsible, in the event of a disagreement between the co-Chairs, the final decision should, in any case, be taken by the competent authority, who should provide ESMA with a reasoned explanation of its decision.

www.parlament.gv.at

(32) ESMA should be able to contribute more effectively to ensuring that Union CCPs are safe, robust and competitive in providing their services throughout the Union. Therefore, ESMA should, in addition to the supervisory competences currently laid down in Regulation (EU) No 648/2012, issue an opinion to the CCP's competent authority about a CCP's withdrawal of authorisation except where a decision is required urgently, meaning within a period shorter than the period allocated for ESMA to provide its opinions. ESMA should also issue opinions on the review and evaluation, margin requirements and participation requirements. Competent authorities should provide explanations for any significant deviations from ESMA's opinions and ESMA should inform its Board of Supervisors where a competent authority does not comply or does not intend to comply with ESMA's opinion and with any conditions or recommendations included therein. The information should also include the reasons provided by the competent authority for non-compliance with ESMA's opinion or any conditions or recommendations contained therein.

www.parlament.gv.at

(33) To ensure the swift and efficient sharing of information and documentation under Regulation (EU) No 648/2012, to foster greater cooperation among competent authorities involved in the supervision of entities subject to that Regulation and to simplify communication between competent authorities and their supervised entities in relation to procedures mandated under that Regulation, ESMA should establish and maintain an electronic central database. All relevant competent authorities and bodies should have access to that central database for the information pertinent to their tasks and responsibilities. Similarly, entities subject to the requirements of Regulation (EU) No 648/2012 should have access to the information and documentation they submitted and any documentation addressed to them. The central database should be used to share as much information and documentation as possible, including at least the information and documentation relating to authorisations, extensions of services and model validations.

www.parlament.gv.at

(34) It is necessary to ensure that CCPs comply with Regulation (EU) No 648/2012 on an ongoing basis, particularly in relation to the provision of additional clearing services or activities authorised via the accelerated procedure or exempted from authorisation as a result of the implementation of business-as-usual changes, as well as the implementation of model changes after an accelerated procedure for the validation of such a model change, as in such cases ESMA and the college do not issue separate opinions. Hence, the review conducted by the CCP's competent authority, at least on an annual basis, should in particular consider those additional clearing services or activities and model changes. To ensure supervisory convergence and coordination between competent authorities and ESMA, and that Union CCPs are safe, robust and competitive in providing their services throughout the Union, the competent authority should, at least annually, submit its report in relation to its review and evaluation of a CCP to ESMA and the college for their opinions. ESMA's opinion should assess the aspects covered by the competent authority's report, which include a follow-up on the provision of services or activities by the CCP, with specific attention to accelerated procedures and business-as-usual changes, as well as the cross-border risks the CCP might be exposed to, and considering the CCP's overall position as a clearing service provider within the Union.

www.parlament.gv.at

On-site inspections play a key role in the conduct of supervisory tasks, offering invaluable information to competent authorities. As such, they should be conducted at least once a year and, to ensure the prompt exchange of information, knowledge sharing and effective cooperation between the competent authorities and ESMA, ESMA should be informed of both planned and urgent on-site inspections, be able to request to participate in such inspections and receive any relevant information in relation to such on-site inspections, as well as a reasoned explanation for any refusal to permit ESMA to participate. In addition, to further enhance coordination between ESMA and the competent authorities, ESMA, under specific circumstances and in the context of the supervisory review and evaluation, may request an ad hoc meeting with the CCP and the competent authority concerned. The college should be informed of the outcome of such a meeting. To strengthen information sharing between the competent authorities and ESMA, the latter should also be able to request from the competent authorities the information it needs to carry out its tasks in the context of the supervisory review and evaluation.

www.parlament.gv.at

(35) ESMA should have the means to identify potential risks to the financial stability of the Union. ESMA should therefore, in cooperation with the ESRB, EBA, EIOPA, and the European Central Bank (ECB) in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013[15], identify the interconnections and interdependencies between different CCPs and legal persons, including, to the extent possible, shared clearing members, clients and indirect clients, shared material service providers, shared material liquidity providers, cross-collateral arrangements, cross-default provisions and cross-CCP netting, cross-guarantee agreements and risks transfers and back-to-back trading arrangements.

---

[15] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

www.parlament.gv.at

(36) The central banks of issue of the Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee are non-voting members of the CCP Supervisory Committee. They only participate in its meetings for Union CCPs in the context of discussions about the Union-wide assessments of the resilience of Union CCPs to adverse market developments and relevant market developments. Contrary to their involvement in the supervision of third-country CCPs, central banks of issue are thus insufficiently involved in supervisory matters for Union CCPs that are of direct relevance to the conduct of monetary policy and the smooth operation of payments systems, which leads to insufficient consideration of cross-border risks. It is therefore appropriate that those central banks of issue are able to attend as non-voting members all meetings of the CCP Supervisory Committee when it convenes for Union CCPs.

www.parlament.gv.at

(37) To enhance the ability of Union bodies to have a comprehensive overview of market developments relevant for clearing in the Union, to monitor the implementation of certain clearing related requirements of Regulation (EU) No 648/2012 and to collectively discuss the potential risks arising from the interconnectedness of different financial actors and other issues related to the financial stability, it is necessary to establish a cross-sectoral monitoring mechanism bringing together the relevant Union bodies involved in the supervision of Union CCPs, clearing members and clients (Joint Monitoring Mechanism). The Joint Monitoring Mechanism should be managed and chaired by ESMA as the authority involved in the supervision of Union CCPs and supervising systemically important third-country CCPs. Other participants should include representatives of the Commission, EBA, EIOPA, the ESRB, the central banks of issue of the currencies in which the contracts belonging to clearing services of substantial systemic importance are denominated, national competent authorities, and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Regulation (EU) No 1024/2013.

www.parlament.gv.at

(38) To inform future policy decisions, ESMA, in cooperation with the other participants in the Joint Monitoring Mechanism, should submit an annual report to the European Parliament, the Council and the Commission on the results of their activities. ESMA can institute a breach of Union law procedure pursuant to Regulation (EU) No 1095/2010 where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA considers that competent authorities fail to ensure clearing members' and clients' compliance with the requirement to clear at least a defined number of identified contracts at accounts at Union CCPs, or where ESMA identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law. Before instituting such a breach of Union law procedure, ESMA can issue guidelines and recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010. Where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA considers that compliance with the requirement to clear at least a defined number of identified contracts at accounts at Union CCPs does not effectively ensure the reduction of Union clearing members' and clients' excessive exposure to Tier 2 CCPs, it should review and propose amending the relevant Commission delegated act specifying further that requirement and proposing to set, where necessary, an appropriate adaptation period.

www.parlament.gv.at

(39) The 2020 market turmoil as a result of the COVID-19 pandemic and the 2022 high prices on energy wholesale markets following Russia's unprovoked and unjustified war of aggression against Ukraine showed that, while it is essential for competent authorities to cooperate and exchange information to address ensuing risks when events with a cross-border impact emerge, ESMA still lacks the necessary tools to ensure such coordination and a convergent approach at Union level. ESMA should therefore be empowered to act in an emergency situation at one or more CCPs that has or is likely to have destabilising effects on cross-border markets. In such emergency situations, ESMA should be entrusted with a coordination role between competent authorities, colleges and resolution authorities in order to build a coordinated response. ESMA should be able to convene meetings of the CCP Supervisory Committee, either on its own initiative or upon request, potentially with an enlarged composition, to coordinate effectively competent authorities' responses in emergency situations. ESMA should also be able to request information from relevant competent authorities where necessary for ESMA to perform its coordination function in those situations and for ESMA to be able to issue recommendations to the competent authority, and ESMA should be able to request such information directly from the CCP or market participants where the competent authority does not provide answers within the appropriate timeframe. The role of ESMA in emergency situations should be without prejudice to the final responsibility of the CCP's competent authority to take supervisory decisions in respect of the CCP it supervises, including emergency measures. It is also essential that college members are able to forward the information they receive in an emergency situation to the public bodies, including ministries, responsible for the financial stability of their markets.

www.parlament.gv.at

(40) To reduce the burden on CCPs and ESMA, it should be clarified that where ESMA undertakes a review of a third-country CCP's recognition, that third-country CCP should not be obliged to submit a new application for recognition. It should, however, provide ESMA with all information necessary for such review. Consequently, ESMA's review of a third-country CCP's recognition should not be treated as a new recognition of that third-country CCP.

(41) The Commission should be able, when adopting an equivalence decision, to waive the requirement for that third country to have an effective equivalent system for the recognition of third-country CCPs. In considering whether such an approach would be proportionate, the Commission might consider a range of different factors, including compliance with the Principles for financial market infrastructures published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, the size of the third-country CCPs established in that jurisdiction and, where known, the expected activity in those third-country CCPs by clearing members and trading venues established in the Union.

www.parlament.gv.at

(42) To ensure that cooperation arrangements between ESMA and the relevant competent authorities of third countries are proportionate, such arrangements should take into consideration a range of different aspects, including the categorisation of third-country CCPs as Tier 1 or Tier 2 CCPs, the specific features of the scope of services provided, or intended to be provided, within the Union, whether those services entail specific risks to the Union or to one or more of its Member States, as well as adherence of the third-country CCPs to international standards. The cooperation arrangements between ESMA and the relevant competent authorities of third countries should therefore reflect the degree of risk that CCPs established in a third country potentially present to the financial stability of the Union or of one or more of its Member States.

www.parlament.gv.at

(43) ESMA should therefore tailor its cooperation arrangements to different third-country jurisdictions based on the CCPs established in a given jurisdiction. In particular, Tier 1 CCPs cover a wide range of CCP profiles so ESMA should ensure that a cooperation arrangement is proportionate to the CCPs established in each third-country jurisdiction. More specifically, ESMA should consider, amongst others, the liquidity of the markets concerned, the degree to which CCPs' clearing activities are denominated in euro or other Union currencies and the extent to which Union entities use the services of such CCPs. Considering that the vast majority of Tier 1 CCPs provide clearing services to a limited extent to clearing members and trading venues established in the Union and might clear products that are not within the scope of Regulation (EU) No 648/2012, ESMA's scope of assessment and information to be requested should also be limited in all of those jurisdictions. To limit information requests for Tier 1 CCPs, a pre-defined range of information should in principle be requested by ESMA annually. Where the risks from a Tier 1 CCP or jurisdiction are potentially greater, additional requests, at least on quarterly basis, and a wider scope of information requested would be justified. Cooperation arrangements should be tailored to reflect such a differentiation in the risk profile of different Tier 1 CCPs and should include provisions that organise an appropriate framework for the exchange of information. However, any cooperation arrangements in place when this Regulation enters into force should not be required to be adjusted unless the relevant third-country authorities so request.

www.parlament.gv.at

(44) Where a CCP is recognised as a Tier 2 CCP under Article 25(2b) of Regulation (EU) No 648/2012, considering that those CCPs are of systemic importance for the Union or for one or more of its Member States, the cooperation arrangements between ESMA and the relevant third-country authorities should cover the exchange of information for a broader range of information and with increased frequency. In that case, the cooperation arrangements should also entail procedures to ensure that such a Tier 2 CCP is supervised pursuant to Article 25 of that Regulation. ESMA should ensure it can obtain all information necessary to fulfil its duties under Regulation (EU) No 648/2012, including information necessary to ensure compliance with Article 25(2b) of that Regulation and to ensure that information is shared where a CCP has been granted, partially or fully, comparable compliance. To enable ESMA to carry out full and effective supervision of Tier 2 CCPs, it should be clarified that those CCPs are to provide ESMA with information periodically.

www.parlament.gv.at

(45) ESMA should also, where comparable compliance is granted, regularly assess the continued compliance by Tier 2 CCPs with the conditions for their recognition through comparable compliance, by monitoring CCPs' compliance with the requirements set out in Article 16 and Titles IV and V under Commission Delegated Regulation (EU) 2020/1304[16]. In undertaking that assessment, ESMA should, in addition to receiving the relevant information and confirmations from the Tier 2 CCPs, cooperate and agree on administrative procedures with the third-country authority to ensure that ESMA has the relevant information to monitor that the conditions for comparable compliance are complied with and, to the extent possible, reduce the administrative and regulatory burden for those Tier 2 CCPs.

---

16 Commission Delegated Regulation (EU) 2020/1304 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the minimum elements to be assessed by ESMA when assessing third-country CCPs' requests for comparable compliance and the modalities and conditions of that assessment (OJ L 305, 21.9.2020, p. 13).

www.parlament.gv.at

(46) To ensure that ESMA is also informed about how a Tier 2 CCP is prepared for and can mitigate and recover from financial distress, the cooperation arrangements should include the right for ESMA to be consulted in the preparation and assessment of recovery plans and in the preparation of resolution plans, as well as the right for ESMA to be informed where a Tier 2 CCP establishes a recovery plan or where a third-country authority establishes resolution plans. ESMA should also be informed of the aspects relevant for the financial stability of the Union, or of one or more of its Member States, and on how individual clearing members and, to the extent known, clients and indirect clients, could be materially affected by the implementation of such recovery plans or resolution plans. The cooperation arrangements should also specify that ESMA is to be informed when a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of the CCP, its ability to provide clearing services, or where the third-country authorities envisage taking a resolution action in the near future.

(47) ESMA should be able to withdraw the recognition of a third-country CCP where that third-country CCP has seriously and systematically infringed any of the applicable requirements laid down in Regulation (EU) No 648/2012, including the submission to ESMA of information pertaining to the recognition of that third-country CCP, the payment of fees to ESMA or the answer to ESMA's requests for information necessary for ESMA to carry out its duties in respect of third-country CCPs, and has not taken the remedial action requested by ESMA within an appropriately set timeframe.

www.parlament.gv.at

(48) To mitigate potential risks for the financial stability of the Union, CCPs and clearing houses should not be able to be clearing members of other CCPs nor should CCPs be able to accept other CCPs or clearing houses as clearing members or indirect clearing members. Market participants currently operating under such arrangements should be required to find other ways to centrally clear. Such a prohibition should not impact interoperability arrangements, which are regulated under Title V of Regulation (EU) No 648/2012 and arrangements entered into for the purpose of a CCP undertaking its investment policy in accordance with that Regulation, such as sponsored memberships or direct access to cleared repo markets between CCPs. To provide sufficient time for adaptation, existing arrangements should be phased out within two years from the date of entry into force of this Regulation. Market participants and authorities should explore different solutions, including setting up interoperability arrangements.

(49) Regulation (EU) No 648/2012 should apply to interoperability arrangements for all types of financial and non-financial instruments, such as derivative contracts, in addition to money-market instruments and transferable securities as defined in Directive 2014/65/EU of the European Parliament and of the Council[17]. ESMA, after consulting the members of the ESCB and the ESRB, should therefore develop draft regulatory technical standards to ensure consistent, efficient and effective assessments of interoperability arrangements.

[17] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

www.parlament.gv.at

(50) To ensure the supervisory framework for Union CCPs results in safe and resilient CCPs, and is built on cooperation between the CCP's competent authority and ESMA, the results of independent audits should be communicated to the board of the CCP and also be made available to ESMA and the CCP's competent authority. In addition, both ESMA and the CCP's competent authority should be able to request to attend the CCP's risk committee meetings in a non-voting capacity and be informed of the activities and decisions of that risk committee. ESMA should also promptly receive any decisions in which the board of the CCP decides not to follow the advice of the risk committee, as well as the CCP's explanation for such decisions.

www.parlament.gv.at

(51) Recent events of extreme volatility on commodity markets illustrate the fact that non-financial counterparties do not have the same access to liquidity as financial counterparties. Therefore, non-financial counterparties should only be allowed to offer client clearing services to non-financial counterparties belonging to the same group. Where a CCP has accepted or intends to accept non-financial counterparties as clearing members, that CCP should ensure that non-financial counterparties are able to demonstrate that they can fulfil the margin requirements and provide default funds contributions, including in stressed conditions. Given that non-financial counterparties are not subject to the same prudential requirements and liquidity safeguards as financial counterparties, direct access of non-financial counterparties to CCPs should be monitored by the competent authorities of CCPs accepting them as clearing members. The competent authority of the CCP should report to ESMA and the college on a regular basis on the products cleared by non-financial counterparties, the overall exposure and any identified risks. This Regulation does not aim to restrict the ability of non-financial counterparties to become direct clearing members of a CCP in a prudentially sound manner.

www.parlament.gv.at

(52) To ensure that clients and indirect clients have better visibility and predictability of margin calls, and thus further develop their liquidity management strategies, clearing members and clients providing clearing services should ensure transparency towards their clients. Due to their provision of clearing services and their professional experience with central clearing and liquidity management, clearing members are best placed to communicate in a clear and transparent manner to clients how margin models work, including in stress events, and the implications such events can have on the margins clients are requested to post, including any additional margin clearing members themselves might request from their clients. A better understanding of margin models can improve clients' ability to reasonably predict margin calls and prepare themselves for collateral requests, particularly in stress events. In order to ensure that clearing members are able to provide effectively the required levels of transparency on margin calls and CCP margin models to their clients, CCPs should also provide them with the information needed. ESMA, in consultation with EBA and the ESCB, should further specify the scope and format of the exchange of information between CCPs and clearing members and between clearing members and their clients.

(53) To ensure that margin models reflect current market conditions, CCPs should not only regularly but also continuously revise the level of their margins taking into account any potentially procyclical effects of such revisions. When calling and collecting margins on an intraday basis, CCPs should further consider the potential impact of their intraday margin collections and payments on the liquidity positions of their participants.

www.parlament.gv.at

(54) To ensure that liquidity risk is accurately defined, the entities whose default a CCP should take into account when determining such risk should be expanded to cover not only the liquidity risk generated by the default of clearing members but also of liquidity providers, excluding central banks.

(55) To facilitate access to clearing by non-financial entities that do not hold sufficient amounts of highly liquid assets, in particular energy companies under conditions to be specified by ESMA, and to ensure that a CCP takes those conditions into account when calculating its overall exposure to a bank that is also a clearing member, public bank guarantees and commercial bank guarantees should be considered eligible collateral. When specifying the conditions under which those guarantees may be accepted as collateral, ESMA should allow the CCP to decide the level of collateralisation of those guarantees based on its risk assessment, including the possibility for those guarantees to be uncollateralised, subject to appropriate concentration limits, credit quality requirements and stringent wrong-way risk requirements. In addition, given their low credit risk profile, it should be specified that public guarantees are also eligible as collateral. Finally, a CCP should, when revising the level of the haircuts it applies to the assets it accepts as collateral, take into account any potential procyclical effects of such revisions.

www.parlament.gv.at

(56) To facilitate the transfer of a client's positions in the event of a clearing member default, the clearing member that receives such positions should be given time to comply with certain requirements that come with the provision of client clearing services. In particular, and considering that the transfer of the client's positions takes place under extraordinary circumstances and over a short period, the receiving clearing member should be given three months to undertake and complete its due diligence processes to ensure compliance with anti-money laundering requirements under Union law. In addition, and if applicable, the receiving clearing member should comply with capital requirements for exposures of clearing members towards clients under Regulation (EU) No 575/2013 within a period agreed with its competent authority not exceeding three months. The starting point of that agreed period should be the date of transfer of the client's positions from the defaulting clearing member to the receiving clearing member.

www.parlament.gv.at

(57) In relation to the validation of changes to the models and parameters of CCPs, amendments should be introduced to simplify the process in order to facilitate CCPs' ability to respond promptly to market developments that may require amendments to their risk models and parameters. To ensure supervisory convergence, Regulation (EU) No 648/2012 should specify the conditions to be considered when assessing whether a given change is significant and ESMA, in close cooperation with the ESCB, is requested to further refine such conditions by defining quantitative thresholds and specific elements to be considered. In particular, ESMA should specify the criteria for changes that should be considered significant, including which structural elements of risk models should be included within the scope of changes that are considered significant. Those structural elements of risk models should include, for example, the anti-procyclicality tools implemented by CCPs. All significant changes should be subject to full validation before their adoption. Where a CCP applies and uses a previously validated model or applies only minor changes to it, such as adjusting the parameters within an approved range that is part of the validated model due to external factors such as changes to prices in the market, it should not be considered a change to the model and therefore it does not need to be validated.

www.parlament.gv.at

(58) Non-significant changes to models and parameters that do not increase the risks for a Union CCP should be able to be approved swiftly. Therefore, in line with the objective of having safe and resilient Union CCPs while building a modern and competitive Union clearing ecosystem able to attract business, an accelerated procedure for non-significant changes to models and parameters should be introduced in order to limit the challenges and uncertainty that currently exist in the supervisory validation procedure of such changes. Where a change is not significant, an accelerated validation procedure should apply. Such a procedure is intended to facilitate CCPs' ability to respond promptly to market developments that might require amendments to their risk models and parameters. Therefore, the procedure for the validation of such changes to risk models and parameters should be simplified.

(59) Regulation (EU) No 648/2012 should be reviewed no later than five years after the date of entry into force of this amending Regulation, in order to allow sufficient time to apply the changes introduced by this amending Regulation. While a review of Regulation (EU) No 648/2012 in its entirety should be carried out, that review should focus on the effectiveness and efficiency of that Regulation in meeting its aims, improving the efficiency and safety of Union clearing markets and preserving the financial stability of the Union. The review should also consider the attractiveness of Union CCPs, the impact of this amending Regulation on encouraging clearing in the Union, and the extent to which the enhanced assessment and management of cross-border risks have benefited the Union.

www.parlament.gv.at

(60) To ensure consistency between Regulation (EU) 2017/1131 of the European Parliament and of the Council[18] and Regulation (EU) No 648/2012 and to preserve the integrity and stability of the internal market, it is necessary to lay down in Regulation (EU) 2017/1131 a uniform set of rules to address counterparty risk in financial derivative transactions performed by money market funds, where the transactions have been cleared by an authorised or recognised CCP. As central clearing arrangements mitigate counterparty risk that is inherent in financial derivative contracts, it is necessary to take into consideration whether a derivative has been centrally cleared by an authorised or recognised CCP when determining the applicable counterparty risk limits. It is also necessary for regulatory and harmonisation purposes to lift counterparty risk limits only where the counterparties use authorised or recognised CCPs to provide clearing services to clearing members and their clients.

---

[18] Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

www.parlament.gv.at

(61) In order to ensure consistent harmonisation of rules introduced by this Regulation, technical standards should be developed. The Commission should be empowered to adopt regulatory technical standards developed by ESMA with regard to further specifying the following: the value of the clearing thresholds applicable to aggregate positions; the elements and requirements of a PTRR exercise and for a PTRR service provider; the operational and representativeness criteria for the active account requirement; the details of the relevant reporting; the type of fees and other costs that should be disclosed to clients when providing clearing services; the content of information to be reported and the level of detail of that information for third-country CCPs recognised under Regulation (EU) No 648/2012; the details and content of the information to be provided by CCPs established in the Union; the scope and details of the reporting by Union clearing members and clients to their competent authorities on their clearing activity in third-country CCPs and while providing the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives to also review the scope of the hedging exemption and thresholds for the clearing obligation to apply; systematic manifest errors of the reporting; the documents and information that CCPs are required to submit when applying for authorisation or for an extension of authorisation; the type of extension that would not have a material impact on a CCP's risk profile and the notification frequency for the use of the exemption; the conditions to determine whether the accelerated procedure for an extension of authorisation applies and the procedure for seeking input from ESMA and the college; the elements to be considered when laying down the admission criteria of a CCP and when assessing the ability of non-financial counterparties to meet the relevant requirements; transparency requirements; collateral requirements; the aspects of model validation; and the requirements for CCPs to adequately manage the risks arising from interoperability arrangements. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

www.parlament.gv.at

(62) In order to ensure uniform conditions for the implementation of this Regulation, the Commission should also be empowered to adopt implementing technical standards developed by ESMA with regard to format of the reporting by Union clearing members and clients to their competent authorities on their clearing activity in third-country CCPs recognised under Regulation (EU) No 648/2012, the data standards and formats for the reporting of information of Union CCPs to ESMA, the format of the required documents for applications for an authorisation, for extension of the authorisation and for the validation of changes to models and parameters. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

(63) In order to ensure the objectives of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[19]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

---

[19] OJ L 123, 12.5.2016, p. 1.

www.parlament.gv.at

(64) Since the objectives of this Regulation, namely to increase the safety and efficiency of Union CCPs by improving their attractiveness, encouraging clearing in the Union and enhancing the cross-border consideration of risks, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(65) Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

www.parlament.gv.at

Article 1

Amendments to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) in Article 1, paragraph 3 is deleted;

(2) Article 3 is replaced by the following:

'*Article 3*

Intragroup transactions

1. In relation to a non-financial counterparty, an intragroup transaction shall be an OTC derivative contract entered into with another counterparty which is part of the same group provided that the following conditions are met:

(a) both counterparties are included in the same consolidation on a full basis and they are subject to appropriate centralised risk evaluation, measurement and control procedures; and

(b) that other counterparty is established in the Union or, if it is established in a third country, that third country is not identified under paragraph 4 or under the delegated acts adopted pursuant to paragraph 5.

www.parlament.gv.at

2. In relation to a financial counterparty, an intragroup transaction shall be any of the following:

(a) an OTC derivative contract entered into with another counterparty which is part of the same group, provided that all of the following conditions are met:

(i) the financial counterparty is established in the Union or, if it is established in a third country, that third country is not identified under paragraph 4 or under the delegated acts adopted pursuant to paragraph 5;

(ii) the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;

(iii) both counterparties are included in the same consolidation on a full basis; and

(iv) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

www.parlament.gv.at

(b) an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme, referred to in Article 113(7) of Regulation (EU) No 575/2013, provided that the condition set out in point (a)(ii) of this paragraph is met;

(c) an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body, as referred to in Article 10(1) of Regulation (EU) No 575/2013;

(d) an OTC derivative contract entered into with a non-financial counterparty which is part of the same group, provided that the following conditions are met:

(i) both counterparties to the derivative contract are included in the same consolidation on a full basis and they are subject to appropriate centralised risk evaluation, measurement and control procedures; and

(ii) the non-financial counterparty is established in the Union or, if it is established in a third country, that third country is not identified under paragraph 4 or under the delegated acts adopted pursuant to paragraph 5.

www.parlament.gv.at

3. For the purposes of this Article, counterparties shall be considered to be included in the same consolidation when both counterparties are any of the following:

(a) included in a consolidation in accordance with Directive 2013/34/EU of the European Parliament and of the Council* or with the International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Commission Regulation (EC) No 1569/2007** (or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation); or

(b) covered by the same consolidated supervision in accordance with Directive 2013/36/EU or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 127 of that Directive.

www.parlament.gv.at

4. For the purposes of this Article, transactions with counterparties established in any of the following third countries shall not benefit from any of the exemptions for intragroup transactions:

   (a) where the third country is a high-risk third country, as referred to in Article 29 of Regulation (EU) 2024/1624 of the European Parliament and of the Council***;

   (b) where the third country is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes in its most up-to-date version.

5. Where appropriate due to identified issues in the legal, supervisory and enforcement arrangements of a third country and where those issues result in increased risks, including counterparty credit risk and legal risk, the Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation by identifying the third countries whose entities are not permitted to benefit from any of the exemptions for intragroup transactions despite those third countries not being third countries as referred to in paragraph 4 of this Article.

www.parlament.gv.at

---

* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

** Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340, 22.12.2007, p. 66).

*** Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L, 2024/1624, 19.6.2024, ELI: http://data.europa.eu/eli/reg/2024/1624/oj).';

(3) in Article 4(1), the following subparagraph is added:

'The obligation to clear all OTC derivative contracts shall not apply to contracts concluded in the situations referred to in the first subparagraph, point (a)(iv), between, on the one side, a financial counterparty that meets the conditions set out in Article 4a(1), second subparagraph, or a non-financial counterparty that meets the conditions set out in Article 10(1), second subparagraph, and, on the other side, a pension scheme arrangement that is established in a third country and that operates on a national basis, provided that it is authorised, supervised and recognised under national law, and where its primary purpose is to provide retirement benefits and it is exempted from the clearing obligation under that national law.';

www.parlament.gv.at

(4) Article 4a is replaced by the following:

‘*Article 4a*

Financial counterparties that are subject to the clearing obligation

1. Every 12 months, a financial counterparty taking positions in OTC derivative contracts may calculate the following positions:

   (a) its uncleared positions in accordance with paragraph 3, first subparagraph;

   (b) its aggregate month-end average positions in cleared and uncleared OTC derivative contracts for the previous 12 months (“aggregate positions”) in accordance with paragraph 3, second subparagraph.

   Where a financial counterparty:

   (a) does not calculate its uncleared positions, or where the result of the calculation of those uncleared positions under the first subparagraph, point (a), of this paragraph exceeds any of the clearing thresholds specified pursuant to Article 10(4), first subparagraph, point (b); or

www.parlament.gv.at

(b) does not calculate its aggregate positions, or where the result of the calculation of those aggregate positions exceeds any of the clearing thresholds specified pursuant to paragraph 4 of this Article;

that financial counterparty shall:

(i) immediately notify ESMA and the relevant competent authority thereof;

(ii) establish clearing arrangements within four months of the notification referred to in point (i) of this subparagraph; and

(iii) become subject to the clearing obligation referred to in Article 4 for all OTC derivative contracts pertaining to any class of OTC derivatives which is subject to the clearing obligation entered into or novated more than four months following the notification referred to in point (i) of this subparagraph.

The financial counterparty may delegate the task to notify ESMA under the second subparagraph, point (i), to any other entity within the group to which that financial counterparty belongs. The financial counterparty remains legally liable for ensuring such notification has been made to ESMA.

www.parlament.gv.at

2. A financial counterparty that is subject to the clearing obligation referred to in Article 4 or that becomes subject to the clearing obligation in accordance with paragraph 1, second subparagraph, of this Article, shall remain subject to that clearing obligation and shall continue clearing until that financial counterparty demonstrates to the relevant competent authority that its aggregate positions or uncleared positions do not exceed the clearing thresholds specified pursuant to paragraph 4 of this Article or Article 10(4), first subparagraph, point (b).

   The financial counterparty shall be able to demonstrate to the relevant competent authority that the calculation of the aggregate positions or uncleared positions, as applicable, do not lead to a systematic underestimation of those aggregate positions or uncleared positions.

3. In calculating the uncleared positions referred to in paragraph 1, first subparagraph, point (a), of this Article the financial counterparty shall include all OTC derivative contracts that are not cleared through a CCP authorised under Article 14 or recognised under Article 25, entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.

   In calculating the aggregate positions, the financial counterparty shall include all OTC derivative contracts entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.

www.parlament.gv.at

Notwithstanding the first and the second subparagraphs, for UCITS and AIFs, the uncleared positions and the aggregate positions shall be calculated at the level of the fund.

UCITS management companies which manage more than one UCITS and AIFMs which manage more than one AIF shall be able to demonstrate to the relevant competent authority that the calculation of positions at the fund level does not lead to:

(a) a systematic underestimation of the positions of any of the funds they manage or the positions of the manager; or

(b) a circumvention of the clearing obligation.

The relevant competent authorities of the financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure the effective calculation of the positions at the group level.

4. ESMA, after having consulted the ESRB and other relevant authorities, shall develop draft regulatory technical standards to specify the value of the clearing thresholds applicable to aggregate positions where necessary to ensure the prudent coverage of financial counterparties under the clearing obligation.

www.parlament.gv.at

Where ESMA, in accordance with Article 10(4a), reviews the clearing thresholds specified pursuant to Article 10(4), first subparagraph, point (b), ESMA shall also review the clearing threshold specified pursuant to the first subparagraph of this paragraph.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. For the purposes of this Article and Article 10, "uncleared position" means the aggregate month-end average position for the previous 12 months in OTC derivative contracts that are not cleared by a CCP authorised under Article 14 or recognised under Article 25.';

www.parlament.gv.at

(5) the following article is inserted:

'*Article 4b*

Post-trade risk reduction services

1. Without prejudice to risk-mitigation techniques under Article 11, the clearing obligation referred to in Article 4(1) shall not apply to an OTC derivative contract that is initiated and concluded as the result of an eligible post-trade risk reduction ("PTRR") exercise ("PTRR transaction") carried out pursuant to paragraphs 2 to 4 of this Article.

2. A PTRR transaction shall only be exempted from the clearing obligation referred to in Article 4(1) where:

   (a) the entity performing the PTRR exercise ("PTRR service provider") complies with the requirements set out under paragraphs 3 and 4 of this Article; and

   (b) each participant in the PTRR exercise complies with the requirements under paragraph 3 of this Article.

3. An eligible PTRR exercise shall:

   (a) be performed by an entity authorised in accordance with Article 7 of the Directive 2014/65/EU that is independent of the counterparties to the OTC derivative contracts included in the PTRR exercise;

www.parlament.gv.at

(b) achieve a reduction in risk in each of the portfolios submitted to the PTRR exercise;

(c) be accepted in full and, as a result, the participants in the PTRR exercise shall not be able to choose which trades to execute under the PTRR exercise;

(d) be open for participation only to the entities that initially submitted a portfolio to the PTRR exercise;

(e) be market risk neutral;

(f) not contribute to price formation;

(g) take the form of a compression, rebalancing or optimisation exercise or a combination thereof;

(h) be executed on a bilateral or multilateral basis.

4. A PTRR service provider shall:

(a) comply with the pre-agreed rules of the PTRR exercise, including methods and algorithms in prescheduled cycles, and act in a reasonable, transparent and non-discriminatory manner;

(b) ensure that entities participating in a PTRR exercise have no influence over the result of the PTRR exercise;

www.parlament.gv.at

(c) undertake regular compression exercises where PTRR exercises result in new PTRR transactions;

(d) keep complete and accurate records of all transactions executed pursuant to a PTRR exercise, including:

   (i) information on transactions entered into as part of the PTRR exercise;

   (ii) transactions resulting from the PTRR exercise either as modified transactions or as new transactions; and

   (iii) the overall change in the risk of the different portfolios included in the PTRR exercise;

(e) upon request make available, without undue delay, the records referred to in point (d) to the relevant competent authority and to ESMA; and

(f) monitor the transactions resulting from the PTRR exercise in order to ensure, to the extent possible, that the PTRR exercise does not result in any misuse or circumvention of the clearing obligation.

www.parlament.gv.at

5. The competent authority which has authorised the PTRR service provider in accordance with Article 7 of Directive 2014/65/EU shall, before a PTRR transaction resulting from a PTRR exercise performed by that PTRR service provider is able to be exempted from the clearing obligation in accordance with paragraph 1, do the following without undue delay:

(a) notify the name of the PTRR service provider to ESMA; and

(b) share with ESMA its assessment of how the requirements referred to in paragraphs 3 and 4 are complied with by the PTRR service provider.

The competent authority referred to in the first subparagraph shall, at least on an annual basis, confirm to ESMA that the PTRR service provider continues to comply with the requirements referred to in paragraphs 3 and 4 or that the PTRR service provider is no longer providing PTRR services, as applicable.

ESMA shall transmit the information received under the first and second subparagraphs of this paragraph to the authorities of each Member State with supervisory powers in relation to the clearing obligation referred to in Article 4(1).

www.parlament.gv.at

The competent authority referred to in the first subparagraph of this paragraph shall, without undue delay, notify ESMA where a PTRR service provider no longer complies with the requirements referred to in paragraphs 3 and 4. Upon such notification, ESMA shall remove the PTRR service provider from the list referred to in the fifth subparagraph of this paragraph. From the date when the PTRR service provider has been removed from that list, PTRR transactions resulting from a PTRR exercise performed by that PTRR service provider shall no longer be exempted from the clearing obligation in accordance with paragraph 1.

ESMA shall, on a yearly basis, publish a list of PTRR service providers notified to ESMA under the first subparagraph, point (a).

6. ESMA shall develop draft regulatory technical standards to further specify the elements and requirements set out in paragraphs 3 and 4 and the following other conditions or characteristics of PTRR exercises:

(a) what constitutes market risk neutrality in a PTRR exercise;

(b) the required risk reduction in submitted portfolios;

(c) the possible inclusion of mixed portfolios containing both cleared and uncleared transactions in the same PTRR exercise and the conditions under which such inclusion would be allowed;

(d) requirements regarding the management of the PTRR exercise;

www.parlament.gv.at

(e) requirements for different types of PTRR services;

(f) the process for monitoring the application of the exemption granted; and

(g) the criteria to apply when assessing whether the clearing obligation is circumvented.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

(6) in Article 6(2), the following point is added:

‘(g) the proportion, as of the end of the calendar year, of derivatives contracts cleared in CCPs authorised in accordance with Article 14 compared with derivatives contracts cleared in third-country CCPs recognised in accordance with Article 25, presented on an aggregated basis and per asset class.’;

www.parlament.gv.at

(7) the following articles are inserted:

‘*Article 7a*

Active account

1. Financial counterparties and non-financial counterparties that are subject to the clearing obligation in accordance with Articles 4a and 10 on … [date of entry into force of this amending Regulation], or that become subject to the clearing obligation thereafter, and that exceed the clearing threshold in any of the categories of derivative contracts referred to in paragraph 6 of this Article, in an individual category listed in that paragraph or on aggregate across all categories listed in that paragraph, shall hold, for those categories of derivative contracts referred to in paragraph 6 of this Article, at least one active account at a CCP authorised under Article 14, where clearing services for the derivatives concerned are provided by that CCP, and clear at least a representative number of trades in that active account.

   Where a financial counterparty or a non-financial counterparty becomes subject to the obligation to hold an active account in accordance with the first subparagraph, that financial counterparty or non-financial counterparty shall notify ESMA and its relevant competent authority thereof and shall establish such an active account within six months of becoming subject to that obligation.

www.parlament.gv.at

2. In determining its obligations in relation to paragraph 1, a counterparty belonging to a group subject to consolidated supervision in the Union shall consider all derivative contracts referred to in paragraph 6 that are cleared by that counterparty or by other entities within the group to which that counterparty belongs with the exception of intragroup transactions.

3. Counterparties that become subject to the obligation set out in paragraph 1, first subparagraph, shall ensure that all of the following requirements are met:

(a) the account is permanently functional, including with legal documentation, IT connectivity and internal processes associated to the account being in place;

(b) the counterparty has systems and resources available to be operationally able to use the account, even at short notice, for large volumes of the derivative contracts referred to in paragraph 6 of this Article at all times and to be able to receive, in a short period of time, a large flow of transactions from positions held in a clearing service of substantial systemic importance pursuant to Article 25(2c);

(c) all new trades of the respective counterparty in the derivative contracts referred to in paragraph 6 can be cleared in the account at all times;

www.parlament.gv.at

(d) the counterparty clears in the active account trades which are representative of the derivative contracts referred to in paragraph 6 of this Article that are cleared at a clearing service of substantial systemic importance pursuant to Article 25(2c) during the reference period.

4. The representativeness obligation referred to in paragraph 3, point (d), shall be assessed according to the following criteria:

(a) the different classes of derivative contracts;

(b) the maturity of the trades;

(c) the trade sizes.

The representativeness obligation referred to in paragraph 3, point (d), shall not apply to counterparties with a notional clearing volume outstanding of less than EUR 6 billion in the derivative contracts referred to in paragraph 6.

The assessment of the representativeness obligation referred to in paragraph 3, point (d), shall be based on subcategories. For each class of derivative contracts, the number of subcategories shall result from the combination of the different sizes of the trades and the maturity ranges.

www.parlament.gv.at

The requirements referred to in paragraph 3, points (a), (b) and (c), shall be fulfilled by the counterparty within six months of becoming subject to the obligation set out in paragraph 1 of this Article and that counterparty shall regularly report in accordance with Article 7b. The requirements shall be regularly stress-tested at least once a year.

For the representativeness obligation referred to in paragraph 3, point (d), to be fulfilled, counterparties shall clear, on annual average basis, at least five trades in each of the most relevant subcategories per class of derivative contracts and per reference period defined in accordance with paragraph 8, third subparagraph. Where the resulting number of trades exceeds half of the total trades of that counterparty for the preceding 12 months, the representativeness obligation referred to in paragraph 3, point (d), shall be considered fulfilled where that counterparty clears at least one trade in each of the most relevant subcategories per class of derivative contracts per reference period.

The representativeness obligation referred to in paragraph 3, point (d), shall not apply to the provision of client clearing services. The calculation of the notional clearing volume outstanding of a counterparty referred to in paragraph 8, fourth subparagraph, shall not include its client clearing activities.

www.parlament.gv.at

5. Financial counterparties and non-financial counterparties that are subject to the obligation referred to in paragraph 1 of this Article and that clear at least 85 % of their derivative contracts belonging to the categories referred to in paragraph 6 of this Article at a CCP authorised under Article 14 shall be exempt from the requirements referred to in paragraph 3, points (a), (b) and (c), of this Article, the requirement referred to in paragraph 4, fourth subparagraph, of this Article and the additional reporting requirement referred to in Article 7b(2).

6. The categories of derivative contracts subject to the obligation referred to in paragraph 1 shall be any of the following:

   (a) interest rate derivatives denominated in euro or Polish zloty;

   (b) short-term interest rate derivatives denominated in euro.

7. Where ESMA undertakes an assessment pursuant to Article 25(2c) and concludes that certain services or activities provided by Tier 2 CCPs are of substantial systemic importance for the Union or for one or more of its Member States, or that services or activities that were previously identified by ESMA as being of substantial systemic importance for the Union or for one or more of its Member States no longer are, the list of contracts subject to the active account obligation may be amended.

www.parlament.gv.at

In order to amend the list of contracts subject to active account obligations, ESMA, after consulting the ESRB and in agreement with the central banks of issue, shall submit to the Commission a thorough and comprehensive cost-benefit analysis, in line with the quantitative technical assessment specified in Article 25(2c), first subparagraph, point (c), as relevant, including effects on other Union currencies, and assessing the possible effects of extending the active account obligations to the new types of contracts, and an opinion in connection to this assessment. The agreement of the central banks of issue shall only relate to the contracts denominated in the currency that they issue.

Where ESMA undertakes the assessment and issues an opinion concluding that the list of contracts should be amended, the Commission is empowered to adopt a delegated act in accordance with Article 82 to amend the list of derivative contracts under the first subparagraph of this paragraph.

8. ESMA, in cooperation with EBA, EIOPA and the ESRB and after consulting the ESCB, shall develop draft regulatory technical standards to further specify the requirements under paragraph 3, points (a), (b) and (c), of this Article, the conditions of the stress testing thereof and the details of the reporting in accordance with Article 7b. In developing those regulatory technical standards, ESMA shall take into account the size of the portfolios of different counterparties according to the third subparagraph of this paragraph, so that counterparties with more trades in their portfolios are subject to more stringent operational conditions and reporting requirements than counterparties with fewer trades.

www.parlament.gv.at

Regarding the representativeness obligation referred to in paragraph 3, point (d), ESMA shall specify the different classes of derivative contracts, subject to a limit of three classes, the different maturity ranges, subject to a limit of four maturity ranges, and the different trade size ranges, subject to a limit of three trade size ranges, to ensure the representativeness of the derivative contracts to be cleared through the active accounts.

ESMA shall set the number, which shall not be higher than five, of the most relevant subcategories per class of derivative contracts to be represented in the active account. The most relevant subcategories shall be those containing the highest number of trades during the reference period.

ESMA shall also set the duration of the reference period, which shall not be less than six months for counterparties with a notional clearing volume outstanding of less than EUR 100 billion in the derivative contracts referred to in paragraph 6 and not less than one month for counterparties with a notional clearing volume outstanding of more than EUR 100 billion in the derivative contracts referred to in paragraph 6.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [six months from the date of entry into force of this amending Regulation].

www.parlament.gv.at

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

9. Competent authorities shall monitor and calculate on an entity, group and aggregate average basis the level of activity in the derivative contracts referred to in paragraph 6 of this Article and shall transmit that information to the Joint Monitoring Mechanism.

Without prejudice to the right of Member States to provide for and impose criminal penalties, where a financial or non-financial counterparty is found to be in breach of its obligations under this Article, its competent authority shall, by decision, impose administrative penalties or periodic penalty payments, or request competent judicial authorities to impose penalties or periodic penalty payments, in order to compel that counterparty to put an end to its infringement.

The periodic penalty payment referred to in the second subparagraph shall be effective and proportionate and not exceed a maximum of 3 % of the average daily turnover in the preceding business year. It shall be imposed for each day of delay, and calculated from the date stipulated in the decision imposing the periodic penalty payment.

www.parlament.gv.at

The periodic penalty payment referred to in the second subparagraph shall be imposed for a maximum period of six months following the notification of the competent authority's decision. Following the end of that period, the competent authority shall review the measure and extend it if necessary.

10. By … [18 months from the date of entry into force of this amending Regulation] ESMA, in close cooperation with the ESCB and the ESRB, and after consulting the Joint Monitoring Mechanism, shall assess the effectiveness of this Article in mitigating the financial stability risks for the Union represented by the exposures of Union counterparties to Tier 2 CCPs offering services of substantial systemic importance pursuant to Article 25(2c).

    ESMA shall accompany the assessment referred to in the first subparagraph with a report to the European Parliament, the Council and the Commission including a fully reasoned impact assessment on complementing measures, including quantitative thresholds.

    Notwithstanding the first subparagraph, ESMA shall submit its assessment and recommendations at any point in time following the receipt of a formal notification by the Joint Monitoring Mechanism, indicating the likely materialisation of financial stability risks for the Union as a result of specific circumstances triggering an event with systemic implications.

www.parlament.gv.at

Within six months of receiving the ESMA report referred to in the second subparagraph, the Commission shall prepare its own report which may be accompanied, where appropriate, by a legislative proposal.

Article 7b

Monitoring of the active account obligation

1. A financial counterparty or a non-financial counterparty that is subject to the obligation referred to in Article 7a shall calculate its activities and risk exposures in the categories of derivative contracts referred to in paragraph 6 of that Article, and report every six months to its competent authority the information necessary to assess compliance with that obligation. The competent authority shall transmit that information to ESMA without undue delay.

   The counterparties referred to in the first subparagraph of this paragraph shall use the information reported under Article 9 where relevant. The reporting shall also include a demonstration to the competent authority that the legal documentation, IT connectivity and internal processes associated to the active accounts are in place.

www.parlament.gv.at

2. Financial counterparties and non-financial counterparties subject to the obligation referred to in paragraph 1 of this Article which hold, for the derivative contracts referred to in Article 7a(6), accounts at a Tier 2 CCP in addition to active accounts, shall also report every six months to their competent authority information on the resources and systems that they have in place to ensure that the condition referred to in Article 7a(3), point (b), is met. The competent authority shall transmit that information to ESMA without undue delay.

3. The competent authorities referred to in the first paragraph of this Article shall ensure that the financial and non-financial counterparties subject to the obligation referred to in Article 7a take the appropriate steps to fulfil that obligation, including using their supervisory powers under their sectoral legislation, where appropriate, or imposing penalties as referred to in Article 12 where necessary. Competent authorities may require more frequent reporting in particular where, based on the information reported, insufficient steps have been taken to meet the requirements set out in this Regulation as regards active accounts.

Article 7c

Information on the provision of clearing services

1. Clearing members and clients that provide clearing services both at a CCP authorised under Article 14 and at a CCP recognised under Article 25 shall inform their clients, where the offer is available, of the possibility to clear their contracts through a CCP authorised under Article 14.

www.parlament.gv.at

2. Notwithstanding Article 4(3a), clearing members and clients that provide clearing services to clients shall disclose, in a clear and understandable manner, for each CCP at which they provide clearing services, the fees to be charged to such clients for the provision of clearing services and any other fees charged including fees charged to clients which pass on costs, and other associated costs related to the provision of clearing services.

3. Clearing members and clients that provide clearing services shall provide the information referred to in paragraph 1:

   (a) when they establish a client clearing relationship with a client; and

   (b) at least on a quarterly basis.

4. ESMA, in consultation with EBA, shall develop draft regulatory technical standards to further specify the type of information referred to in paragraph 2.

   ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

   Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

www.parlament.gv.at

Article 7d

Information on clearing activity in CCPs recognised under Article 25

1. Clearing members and clients that clear contracts through a CCP recognised under Article 25 shall report such clearing activity as follows:

   (a) where they are established in the Union but not part of a group subject to consolidated supervision in the Union, they shall report to their competent authorities;

   (b) where they are part of a group subject to consolidated supervision in the Union, the Union parent undertaking of that group shall report such clearing activity on a consolidated basis to its competent authority.

   The reports referred to in the first subparagraph shall contain information on the scope of the clearing activity in the recognised CCP on an annual basis specifying:

   (a) the type of financial instruments or non-financial instruments cleared;

   (b) the average values cleared over one year per Union currency and per asset class;

   (c) the amount of margins collected;

   (d) the default fund contributions; and

www.parlament.gv.at

(e) the largest payment obligation.

The competent authorities shall promptly transmit the information referred to in the second subparagraph to ESMA and the Joint Monitoring Mechanism.

2. ESMA, in cooperation with EBA, EIOPA and the ESRB and after consulting the members of the ESCB, shall develop draft regulatory technical standards to further specify the content of the information to be reported and the level of detail of the information to be provided in accordance with paragraph 1 of this Article, taking into account the existing reporting channels and the information already available to ESMA under the existing reporting framework, including the reporting obligation under Article 9.

   ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

   Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards to specify the format of the information to be submitted to the competent authority referred to in paragraph 1 taking into account existing reporting channels.

www.parlament.gv.at

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 7e
Information on Union CCPs

1. CCPs authorised under Article 14 shall report to ESMA on a monthly basis, via the central database established by ESMA pursuant to Article 17c (the "central database"), at least the following information:

   (a) the values and volumes cleared per currency and per asset class, including the value of positions held by clearing participants;

   (b) the CCP's investments;

   (c) the CCP's capital, including dedicated own resources used in the default waterfall as referred to in Article 45(4) of this Regulation, and in Article 9(14) of Regulation (EU) 2021/23;

www.parlament.gv.at

(d) the clearing members' margin requirements, default fund contributions, and contractually committed resources in the default management or in the recovery plans referred to in Article 9 of Regulation (EU) 2021/23;

(e) the adequacy of the margin and default fund contributions and waterfall resources with regard to Articles 41, 42 and 45;

(f) the CCP's available liquid resources and the results of the liquidity stress testing;

(g) the details of the clearing members, clients holding individually segregated accounts, third parties providing major activities linked to the CCP's risk management, material liquidity providers connected to the CCP, as well as interoperable and linked CCPs;

(h) any change that the CCP has directly implemented in accordance with Article 15a.

The members of the college of the CCP referred to in Article 18 shall have access to the information provided in accordance with this Article via the central database.

2. ESMA, in close cooperation with EBA and the ESCB, shall develop draft regulatory technical standards to further specify the details and content of the information to be provided under paragraph 1.

www.parlament.gv.at

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards to specify the data standards and formats for the information to be reported in accordance with paragraph 1.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

www.parlament.gv.at

(8) Article 9 is amended as follows:

(a) in paragraph 1, the following subparagraphs are inserted after the first subparagraph:

'Financial counterparties, non-financial counterparties and CCPs subject to the reporting obligation shall put in place appropriate procedures and arrangements to ensure the quality of the data they report in accordance with this Article.

Where a non-financial counterparty that is part of a group meets the conditions set out in Article 10(1), second subparagraph, and benefits from the exemption set out in the fifth subparagraph of this paragraph, the Union parent undertaking of that non-financial counterparty shall report the net aggregate positions by class of derivatives of that non-financial counterparty to its competent authority on a weekly basis. For a counterparty established in the Union, the competent authority of the parent undertaking shall share the information with ESMA and with the competent authority of that counterparty.';

(b) in paragraph 1a, the fourth subparagraph is amended as follows:

(i) point (a) is replaced by the following:

'(a) that third-country entity would be qualified as a financial counterparty if it were established in the Union; and';

(ii) point (b) is deleted;

www.parlament.gv.at

(c) paragraph 1e is replaced by the following:

‘1e. Counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication, including where the reporting obligation has been delegated in accordance with paragraph 1f.’;

(d) the following paragraph is inserted:

‘4a. By … [12 months from the date of entry into force of this amending Regulation] ESMA, in cooperation with EBA and EIOPA, shall draft guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to further specify the procedures and arrangements referred to in the paragraph 1, second subparagraph.’;

(9) Article 10 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘1. Every 12 months, a non-financial counterparty taking positions in OTC derivative contracts may calculate its uncleared positions in accordance with paragraph 3.’;

www.parlament.gv.at

(ii) in the second subparagraph, the introductory wording is replaced by the following:

‘Where a non-financial counterparty does not calculate its uncleared positions, or where the result of the calculation of those uncleared positions in respect of one or more classes of OTC derivatives exceeds the clearing thresholds specified pursuant to paragraph 4, first subparagraph, point (b), that non-financial counterparty shall:’;

(b) paragraphs 2 to 5 are replaced by the following:

‘2. A non-financial counterparty that is subject to the clearing obligation referred to in Article 4 or that becomes subject to the clearing obligation in accordance with paragraph 1, second subparagraph, of this Article, shall remain subject to that obligation and shall continue clearing until that non-financial counterparty demonstrates to the relevant competent authority that its uncleared position does not exceed the clearing threshold specified pursuant to paragraph 4, first subparagraph, point (b), of this Article.

The non-financial counterparty shall be able to demonstrate to the relevant competent authority that the calculation of the uncleared position does not lead to a systematic underestimation of that position.

www.parlament.gv.at

3. In calculating the uncleared positions referred to in paragraph 1 of this Article, the non-financial counterparty shall include all OTC derivative contracts that are not cleared through a CCP authorised under Article 14 or recognised under Article 25 entered into by the non-financial counterparty which are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of the group to which that non-financial counterparty belongs.

4. ESMA, after having consulted the ESRB and other relevant authorities, shall develop draft regulatory technical standards to specify:

   (a) the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity referred to in paragraph 3;

   (b) the values of the clearing thresholds for uncleared positions, which are determined taking into account the calculation methodology set out in paragraph 3 of this Article and Article 4a(3), the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives; and

www.parlament.gv.at

(c) the mechanisms triggering a review of the values of the clearing thresholds, following significant price fluctuations in the underlying class of OTC derivatives or a significant increase of financial stability risks.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

www.parlament.gv.at

4a. ESMA, in consultation with the ESRB, shall review the clearing thresholds referred to in paragraph 4, first subparagraph, point (b), of this Article and in Article 4a(4), taking into account, in particular, the interconnectedness of financial counterparties and the need to ensure the prudent coverage of financial counterparties under the clearing obligation. That review shall be conducted at least every two years, or earlier where necessary or where required under the mechanisms established under paragraph 4, first subparagraph, point (c). As a result of that review, ESMA may, in the regulatory technical standards adopted pursuant to paragraph 4, propose changes to the thresholds specified in the first subparagraph, point (b), of that paragraph. When reviewing the clearing thresholds, ESMA shall consider whether the classes of OTC derivatives, for which a clearing threshold has been set, are still the relevant classes of OTC derivatives or if new classes should be introduced.

That periodic review shall be accompanied by a report by ESMA on the subject.

4b. The relevant competent authorities of the non-financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure the effective calculation of the positions and evaluate and assess the level of exposure in OTC derivative contracts at group level.

www.parlament.gv.at

5. Each Member State shall designate an authority responsible for ensuring that the obligations of non-financial counterparties under this Regulation are met. That authority, in cooperation with the authorities responsible for the other entities of the group, shall report to ESMA at least every two years, and more frequently where an emergency situation is identified under Article 24, on the outcome of the assessment of the level of exposure in OTC derivatives of the non-financial counterparties for which it is responsible. The authority responsible for the Union parent undertaking of the group to which the non-financial counterparty belongs shall report to ESMA, at least every two years, on the outcome of the assessment of the level of exposure in OTC derivatives of the group.

At least every two years from … [date of entry into force of this amending Regulation], ESMA shall present a report to the European Parliament, the Council and the Commission on the activities of Union non-financial counterparties in OTC derivatives, identifying areas where there is a lack of convergence and coherence in the application of this Regulation as well as potential risks to the financial stability of the Union.';

www.parlament.gv.at

(10) Article 11 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

‘A non-financial counterparty that becomes subject to the obligations laid down in the first subparagraph of this paragraph shall establish the necessary arrangements to comply with those obligations within four months of the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.’;

(b) in paragraph 3, the following subparagraphs are added:

‘A non-financial counterparty that becomes subject to the obligations set out in the first subparagraph of this paragraph shall establish the necessary arrangements to comply with those obligations within four months of the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.

www.parlament.gv.at

Financial counterparties and non-financial counterparties referred to in Article 10(1) shall apply for authorisation from their competent authorities before using, or adopting a change to, a model for initial margin calculation with regard to the risk-management procedures laid down in the first subparagraph of this paragraph. When applying for authorisation, those counterparties shall provide their competent authorities, via the central database, with all relevant information regarding those risk-management procedures. Those competent authorities shall grant or refuse such authorisation within six months of receipt of the application for a new model or within three months of receipt of the application for a change to an already authorised model.

Where the model referred to in the third subparagraph of this paragraph is based on a pro forma model, the counterparty shall apply to EBA for the validation of that model and shall provide EBA with all relevant information referred to in that subparagraph via the central database. In addition, the counterparty shall provide EBA with the information on the outstanding notional amount referred to in paragraph 12a of this Article via the central database.

Where the model referred to in the third subparagraph of this paragraph is based on a pro forma model, the competent authorities may grant the authorisation only where the pro forma model has been validated by EBA.

www.parlament.gv.at

EBA, in cooperation with ESMA and EIOPA, may issue guidelines or recommendations with a view to ensuring the uniform application and authorisation process of the risk-management procedures referred to in the first subparagraph of this paragraph in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.';

(c) the following paragraph is inserted:

'3a. By way of derogation from paragraph 3, single stock options and equity index options not cleared by a CCP shall not be subject to risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral.

For the purpose of the first subparagraph of this paragraph, ESMA, in cooperation with EBA and EIOPA, shall monitor:

(a) regulatory developments in third-country jurisdictions in relation to the treatment of single stock options and equity index options;

(b) the impact of the derogation laid down in the first subparagraph on the financial stability of the Union or of one or more of its Member States; and

(c) the development of exposures in single stock options and equity index options not cleared by a CCP.

www.parlament.gv.at

At least every three years from … [date of entry into force of this amending Regulation], ESMA, in cooperation with EBA and EIOPA, shall report to the Commission the findings resulting from its monitoring referred to in the second subparagraph.

Within one year of the date of receipt of the report referred to in the third subparagraph, the Commission shall assess whether:

(a) international developments have led to more convergence in the treatment of single stock options and equity index options; and

(b) the derogation laid down in the first subparagraph endangers the financial stability of the Union or of one or more of its Member States.

The Commission is empowered to adopt a delegated act in accordance with Article 82 to amend this Regulation by revoking the derogation laid down in the first subparagraph following an adaptation period. The adaptation period shall not exceed two years.';

www.parlament.gv.at

(d) the following paragraph is inserted:

'12a. EBA shall set up a central validation function for the elements and general aspects of pro forma models, and changes thereto, used or to be used by financial counterparties and non-financial counterparties referred to in Article 10 for the purpose of complying with the requirements set out in paragraph 3 of this Article. EBA shall collect feedback from ESMA, EIOPA, and the competent authorities responsible for the supervision of counterparties using the pro forma models subject to validation, including on the performance of those pro forma models, and shall coordinate their views with the aim of developing consensus on the elements and general aspects of pro forma models. EBA shall serve as the main point of contact for discussions with market participants and developers of those pro forma models.

In its role as a central validator, EBA shall validate the elements and general aspects of those pro forma models, including their calibration, design and coverage of instruments, asset classes and risk factors. EBA shall grant or refuse such validation within six months of receipt of the application for validation referred to in paragraph 3, fourth subparagraph, for a new pro forma model and within three months of receipt of the application for a change to an already validated model. To facilitate EBA's validation work, developers of pro forma models shall, upon EBA's request, submit to EBA all the necessary information and documentation.

www.parlament.gv.at

EBA shall assist the competent authorities in their authorisation processes regarding the general aspects of the implementation of the models under paragraph 3. To that end, EBA shall prepare a yearly report on the relevant aspects of its validation work, including the verification of the calibration of the models under the second subparagraph of this paragraph and the analysis of the issues reported. Where it deems it necessary, EBA shall issue, in cooperation with ESMA and EIOPA, recommendations in accordance with Article 16 of Regulation (EU) No 1093/2010 addressed to those competent authorities. In order to assist EBA in drafting the reports and recommendations, competent authorities shall provide EBA, upon its request, with the information collected during their initial and ongoing entity-level authorisation process of the models under paragraph 3, or changes thereto.

Competent authorities shall be solely responsible for authorising the use of the models under paragraph 3, or changes thereto, at the supervised entity level.

www.parlament.gv.at

EBA shall charge an annual fee, per pro forma model, to financial counterparties and non-financial counterparties referred to in Article 10(1) using the pro forma models validated by EBA under the second subparagraph of this paragraph. Competent authorities shall report to EBA the financial counterparties and non-financial counterparties that implement models subject to the validation process under the first subparagraph. The fee shall be proportionate to the monthly average outstanding notional amount of non-centrally cleared OTC derivatives over the last 12 months of the counterparties concerned using the pro forma models validated by EBA and shall be assigned to cover all costs incurred by EBA for the performance of its tasks in accordance with the first subparagraph.

For the purposes of this Article, "pro forma model" means an initial margin model established, published, and revised through market-led initiatives.

The Commission is empowered to adopt a delegated act in accordance with Article 82 to supplement this Regulation by setting out:

(a) the method for the determination of the amount of the fees; and

(b) the modalities of the payment of the fees.';

www.parlament.gv.at

(e) paragraph 15 is amended as follows:

(i) in the first subparagraph, point (aa) is replaced by the following:

‘(aa) the supervisory procedures, to ensure initial and ongoing validation of the risk-management procedures referred to in paragraph 3 applied by credit institutions authorised in accordance with Directive 2013/36/EU and investment firms authorised in accordance with Directive 2014/65/EU that have, or belong to a group that has, a monthly average outstanding notional amount of non-centrally cleared OTC derivatives of at least EUR 750 billion, calculated in accordance with the regulatory technical standards to be developed by the ESAs in accordance with this paragraph.’;

(ii) the fourth subparagraph is replaced by the following:

‘EBA, in cooperation with ESMA, shall submit the draft regulatory technical standards referred to in the first subparagraph, point (aa), to the Commission by … [12 months from the date of entry into force of this amending Regulation].’;

www.parlament.gv.at

(11) Article 12 is amended as follows:

(a) the following paragraph is inserted:

‘1a. Without prejudice to paragraph 1 of this Article and to the right of Member States to provide for and impose criminal penalties, the competent authority shall, by decision, impose administrative penalties or periodic penalty payments, or request competent judicial authorities to impose penalties or periodic penalty payments, on the entities subject to the reporting obligation pursuant to Article 9 where the details reported repeatedly contain systematic manifest errors.

The periodic penalty payment referred to in the first subparagraph shall not exceed a maximum of 1 % of the average daily turnover for the preceding business year which, in the case of an ongoing infringement, the entity shall be obliged to pay for every day that the infringement continues, until compliance with the obligation is established or restored. The periodic penalty payment may be imposed for a maximum period of six months from the date set out in the decision of the competent authority requiring the termination of an infringement and imposing the periodic penalty payment.’;

www.parlament.gv.at

(b) the following paragraphs are added:

‘4. By way of derogation from paragraphs 1 and 1a, where the legal system of a Member State does not provide for administrative penalties, this Article may be applied in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative penalties imposed by competent authorities. In any event, the penalties imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by … [date of entry into force of this amending Regulation] and, without delay, any subsequent amending law or amendment affecting them.

5. ESMA, in cooperation with EBA, EIOPA and the ESRB, shall develop draft regulatory technical standards to specify what constitutes systematic manifest errors as referred to in the paragraph 1a.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

www.parlament.gv.at

(12) Article 13 is replaced by the following:

‘*Article 13*

Mechanism to avoid duplicative or conflicting rules with regard to OTC derivative contracts not cleared by a CCP

1. The Commission shall be assisted by the ESAs in monitoring the international application of principles laid down in Article 11, in particular with regard to potential duplicative or conflicting requirements on market participants, and recommend possible action.

2. The Commission may adopt implementing acts declaring that the legal, supervisory and enforcement arrangements of a third country:

   (a) are equivalent to the requirements laid down in Article 11;

   (b) ensure protection of professional secrecy that is equivalent to that set out in Article 83; and

   (c) are being applied effectively and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

   Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 86(2).

www.parlament.gv.at

3. An implementing act on equivalence as referred to in paragraph 2 shall imply that counterparties entering into an OTC derivative contract not cleared by a CCP subject to this Regulation shall be deemed to have fulfilled the obligations contained in Article 11 where at least one of the counterparties is subject to the requirements which are considered equivalent under that implementing act on equivalence.';

(13) Article 14 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The authorisation referred to in paragraph 1 shall be granted for services and activities linked to clearing and shall specify the services or activities for which the CCP is authorised to provide or perform clearing services, including the classes of derivatives, securities, other financial instruments or non-financial instruments covered by such authorisation.

An entity applying for authorisation as a CCP to clear financial instruments shall include in its application the classes of non-financial instruments suitable for clearing that such CCP intends to clear.';

www.parlament.gv.at

(b) the following paragraphs are added:

‘6. ESMA, in close cooperation with the ESCB, shall develop draft regulatory technical standards to specify the list of required documents that are to accompany an application for authorisation as referred to in paragraph 1 and to specify the information that such documents are to contain with a view to demonstrating that the applicant CCP complies with all relevant requirements of this Regulation.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. ESMA shall develop draft implementing technical standards to specify the electronic format of the application for authorisation referred to in paragraph 1 of this Article to be submitted to the central database.

www.parlament.gv.at

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(14) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CCP that intends to extend its business to additional services or activities, including to non-financial instruments suitable to be centrally cleared at an authorised CCP, not covered by the existing authorisation shall submit an application for an extension of that authorisation to additional clearing services or activities in one or more classes of derivatives, securities, other financial instruments or non-financial instruments, to the CCP's competent authority, unless such an extension of activities or services is exempted from authorisation under Article 15a.

The extension of authorisation shall be made in accordance with either the procedure set out in Article 17 or the procedure set out in Article 17a, as applicable.';

www.parlament.gv.at

(b) paragraph 3 is replaced by the following:

‘3. ESMA, in close cooperation with the ESCB, shall develop draft regulatory technical standards to specify the lists of required documents that shall accompany an application for an extension of authorisation pursuant to paragraph 1 and to specify the information that such documents shall contain. The lists of required documents and information shall be relevant and proportionate to the nature of the extension of authorisation procedures referred in paragraph 1, with a view to demonstrating that the CCP meets all relevant requirements of this Regulation.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

www.parlament.gv.at

(c) the following paragraph is added:

‘4. ESMA shall develop draft implementing technical standards to specify the electronic format of the application for an extension of the authorisation referred to in paragraph 1 of this Article to be submitted via the central database.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’;

(15) the following article is inserted:

‘*Article 15a*
Exemption from authorisation of an extension of clearing services or activities

1. Notwithstanding Article 15, a CCP that intends to extend its business to include an additional service or activity not covered by its existing authorisation shall not be required to be authorised for such an extension where that additional service or activity would not have a material impact on the CCP’s risk profile.

www.parlament.gv.at

The CCP shall notify the registered recipients via the central database where it decides to make use of the exemption provided for in the first subparagraph of this paragraph, including the service or activity it intends to provide.

The changes implemented by a CCP in accordance with this Article shall be subject to review and evaluation in accordance with Article 21.

ESMA may review the provision of clearing services and activities and report to the college referred to in Article 18 and to the Commission on the risks arising from CCPs' provision of services and activities pursuant to this Article and on their appropriateness.

2. ESMA, in close cooperation with the members of the ESCB, shall develop draft regulatory technical standards to further specify:

(a) the type of extension of clearing services or activities that would not have a material impact on a CCP's risk profile; and

(b) the frequency with which a CCP shall notify the use of the exemption referred to in paragraph 1, which shall not exceed once every three months.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

www.parlament.gv.at

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(16) Article 17 is amended as follows:

(a) paragraphs 1 to 4 are replaced by the following:

'1. The applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of an existing authorisation as referred to in Article 15(1) in an electronic format via the central database. The application shall be immediately shared via that central database with the CCP's competent authority, ESMA and the college referred to in Article 18.

The applicant CCP shall provide all information necessary to demonstrate that it has established, at the time of the initial authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation. Where a CCP is applying for an extension of an existing authorisation pursuant to Article 15, it shall provide all information necessary to demonstrate that, at the time such an extension is granted, it will have established all additional arrangements to meet any requirements laid down in this Regulation in respect of such an extension.

www.parlament.gv.at

In accordance with Article 17c, an acknowledgement of receipt of the application shall be sent via the central database within two working days of submission of that application under the first subparagraph of this paragraph.

2. The CCP's competent authority shall, following the acknowledgement of receipt referred to in paragraph 1, third subparagraph, notify the applicant CCP whether the application contains the documents and information required.

The notification shall be sent within:

(a) 20 working days of the acknowledgment of the receipt, where the applicant CCP has applied for an authorisation pursuant to Article 14(1); or

(b) 10 working days of the acknowledgment of the receipt, where the applicant CCP has applied for an extension of an existing authorisation pursuant to Article 15(1).

www.parlament.gv.at

Where, during the applicable period specified under the second subparagraph of this paragraph, the CCP's competent authority decides that not all documents or information required pursuant to Article 14(6) and (7) or Article 15(3) and (4) have been submitted, it shall request the applicant CCP to submit such additional documents or information, via the central database. The application for authorisation or the application for the extension of authorisation shall be rejected where the CCP's competent authority decides that the applicant CCP has failed to comply with any such request. The CCP's competent authority shall inform the CCP thereof via the central database.

3. The CCP's competent authority shall conduct a risk assessment of the CCP's compliance with the relevant requirements laid down in this Regulation within the period specified under the second subparagraph (the "risk assessment period").

   The risk assessment shall be carried out within:

   (a) 80 working days of the confirmation set out in paragraph 2, second subparagraph, point (a), where an application is made under Article 14(1); or

   (b) 40 working days of the confirmation set out in paragraph 2, second subparagraph, point (b), where an application is made under Article 15(1).

www.parlament.gv.at

By the end of the risk assessment period, the CCP's competent authority shall submit its draft decision and report to ESMA and the college referred to in Article 18 via the central database.

Following receipt of the draft decision and report referred to in the third subparagraph of this paragraph, and on the basis of the findings therein, the college referred to in Article 18 shall within 15 working days adopt an opinion pursuant to Article 19 determining whether the applicant CCP complies with the requirements laid down in this Regulation and transmit it to the CCP's competent authority and ESMA in an electronic format via the central database.

The college referred to in Article 18 may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management.

Following receipt of the draft decision and report referred to in the third subparagraph of this paragraph, ESMA shall within 15 working days adopt an opinion determining whether the applicant CCP complies with the requirements laid down in this Regulation in accordance with Article 23a(1), point (e), Article 23a(2), and Article 24a(7), first subparagraph, point (bc), and transmit it to the CCP's competent authority and the college referred to in Article 18.

www.parlament.gv.at

ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management in relation to identified cross-border risks or risks to the financial stability of the Union.

3a. Without prejudice to the opinion referred to in paragraph 3, sixth subparagraph, of this Article, following receipt of the draft decision and report referred to in paragraph 3, third subparagraph, of this Article, ESMA may also provide an opinion in accordance with Article 23a and Article 24a(7) on that draft decision to the competent authority where necessary to promote a consistent and coherent application of a relevant article, within 15 working days of receipt of the draft decision.

Where the draft decision submitted to ESMA in accordance with paragraph 3 of this Article shows a lack of convergence or coherence in the application of this Regulation, ESMA shall issue guidelines or recommendations to promote the necessary consistency or coherence in the application of this Regulation pursuant to Article 16 of Regulation (EU) No 1095/2010.

The adopted opinions of ESMA and the college referred to in Article 18 shall be submitted in an electronic format via the central database, to the respective recipients.

www.parlament.gv.at

3b. During the risk assessment period, the CCP's competent authority, through the central database:

(a) may submit questions to, and request complementary information from, the applicant CCP;

(b) shall coordinate and submit questions from ESMA or any member of the college referred to in Article 18 to the applicant CCP; and

(c) shall share with ESMA and the members of the college referred to in Article 18 all answers provided by the applicant CCP.

Where the CCP's competent authority has not provided the requested information to ESMA or any member of the college referred to in Article 18 within 10 working days of submission of the request, ESMA or any member of that college referred to in Article 18 may submit its request directly to the CCP via the central database.

www.parlament.gv.at

Where the applicant CCP has not responded to the questions referred to in the first subparagraph within the deadline set by the authority requesting the information, the CCP's competent authority, after consulting the requesting authority, may decide to extend once the relevant risk assessment period by a maximum of 10 working days in total if, in its view or in the view of the requesting authority, any of the questions is material for the assessment. The competent authority shall inform the applicant CCP, via the central database, of the extension provided. The competent authority may take a decision on the application in the absence of the CCP's response.

3c. Within 10 working days of receipt of the opinions of ESMA and of the college referred to in Article 18, adopted under paragraph 3, fourth and sixth subparagraphs, respectively, of this Article, and, where issued, the opinion of ESMA adopted under paragraph 3a, first subparagraph, of this Article, the CCP's competent authority shall adopt its decision and transmit it to ESMA and the college referred to in Article 18 via the central database.

Where the decision of the CCP's competent authority does not reflect the opinion of the college referred to in Article 18, including any conditions or recommendations contained therein, it shall contain a fully reasoned explanation of any significant deviation from that opinion or conditions or recommendations.

www.parlament.gv.at

Where the CCP's competent authority does not comply or does not intend to comply with an opinion of ESMA or with any conditions or recommendations included therein, ESMA shall inform the Board of Supervisors in accordance with Article 24a. The information shall also include the reasoning from the CCP's competent authority for non-compliance or for its intention not to comply.

4. The CCP's competent authority shall, after duly considering the opinions of ESMA and of the college provided for in paragraphs 3 and 3a of this Article, including any conditions or recommendations contained therein, decide to grant authorisation as referred to in Article 14 and Article 15(1), second subparagraph, only where it is fully satisfied that the applicant CCP:

(a) complies with the requirements laid down in this Regulation, including, where applicable, for the provision of clearing services or activities for non-financial instruments; and

(b) is notified as a system pursuant to Directive 98/26/EC.

Where a CCP applies for an extension of an existing authorisation pursuant to Article 15, ESMA, the college referred to in Article 18 and the CCP's competent authority may rely on part of the assessment previously made pursuant to this Article to the extent that the application for extension will not result in a change or otherwise affect the previous assessment for that part. The CCP shall confirm to the CCP's competent authority that there is no change to the underlying facts of that part of the assessment.

The applicant CCP shall not be authorised where:

(a) the CCP's competent authority has decided not to grant the authorisation; or

(b) all members of the college referred to in Article 18, excluding the authorities of the Member State where the applicant CCP is established, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the applicant CCP is not to be authorised.

The joint opinion referred to in the third subparagraph, point (b), of this paragraph, shall state in writing the full and detailed reasons why the college referred to in Article 18 considers that the requirements laid down in this Regulation or in other Union law are not met.

www.parlament.gv.at

Where such a joint opinion has not been reached by mutual agreement and a majority of two-thirds of the members of the college referred to in Article 18 have expressed a negative opinion, any of the competent authorities concerned, based on that majority, may, within 30 calendar days of the adoption of that negative opinion, refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The decision to refer the matter to ESMA shall state in writing the full and detailed reasons for which the relevant members of the college referred to in Article 18 consider that the requirements laid down in this Regulation or other Union law are not met. In that case, the CCP's competent authority shall defer its decision on authorisation and await any decision on authorisation that ESMA may take in accordance with Article 19(3) of Regulation (EU) No 1095/2010. The CCP's competent authority shall take its decision in conformity with ESMA's decision. The matter shall not be referred to ESMA after the end of the 30-day period referred to in the fifth subparagraph of this paragraph.

Where all members of the college referred to in Article 18, excluding the authorities of the Member State where the applicant CCP is established, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the applicant CCP is not to be authorised, the CCP's competent authority may refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

www.parlament.gv.at

The competent authority of the Member State where the CCP is established shall transmit the decision to the other competent authorities concerned.

The competent authority shall, without undue delay after taking a decision whether to grant or refuse authorisation under paragraph 3c, inform the applicant CCP in writing of its decision via the central database, together with a fully reasoned explanation.';

(b) paragraph 7 is deleted;

(17) the following articles are inserted:

'*Article 17a*
Accelerated procedure for authorisation of an extension of authorisation

1. An accelerated procedure for authorisation of an extension of authorisation shall apply where a CCP intends to extend its business to additional services or activities as referred to in Article 15 and where such extension fulfils all of the following conditions:

(a) it does not result in the CCP needing to adapt significantly its operational structure at any point in the contract cycle;

(b) it does not include offering the clearing of contracts that cannot be liquidated in the same manner as or together with contracts already cleared by the CCP;

www.parlament.gv.at

(c) it does not result in the CCP needing to take into account material new contract specifications;

(d) it does not result in the introduction of material new risks or significantly increase the CCP's risk profile;

(e) it does not include offering a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, central securities depository or payment system which the CCP did not previously use.

2. A CCP that submits an application for an extension of its existing authorisation to additional clearing services or activities pursuant to the accelerated procedure set out in this Article, shall demonstrate that the proposed extension of its business to additional clearing services or activities qualifies to be assessed under such procedure.

The CCP shall submit its application for an extension in an electronic format via the central database and shall provide all information, pursuant to Article 15(3) and (4), necessary to demonstrate that it has established, at the time of authorisation, all necessary arrangements to meet the relevant requirements laid down in this Regulation. In accordance with Article 17c, an acknowledgement of receipt of the application shall be sent via the central database, within two working days of submission of that application.

www.parlament.gv.at

3. Within 15 working days of acknowledgment of receipt of an application pursuant to paragraph 2 of this Article, the CCP's competent authority shall, after considering the input from ESMA and the college referred to in Article 18, decide:

(a) whether the application qualifies to be assessed under the accelerated procedure set out in this Article; and

(b) where the application qualifies to be assessed under the accelerated procedure set out in this Article, whether to:

(i) grant the extension of the authorisation where the CCP complies with this Regulation; or

(ii) refuse the extension of the authorisation where the CCP does not comply with this Regulation.

Where a CCP applies for an extension of authorisation pursuant to Article 15, the CCP's competent authority may rely on part of the assessment previously made pursuant to this Article to the extent that the application for extension will not result in a change or otherwise affect the previous assessment for that part. The CCP shall confirm to the CCP's competent authority that there is no change to the underlying facts of that part of the assessment.

www.parlament.gv.at

Where the competent authority has decided that the extension of authorisation does not qualify to be assessed under the accelerated procedure, the CCP's application shall be rejected.

Where the competent authority has decided not to grant the extension of authorisation, the extension of the authorisation shall be refused.

4. The CCP's competent authority shall notify the applicant CCP in writing, via the central database, within the timeframe stated in paragraph 3, of its decision under that paragraph.

5. ESMA, in close cooperation with the ESCB, shall develop draft regulatory technical standards to further specify the conditions referred to in paragraph 1, points (a) to (e) of this Article, and to specify the procedure for consulting ESMA and the college referred to in Article 18 in accordance with paragraph 3 of this Article on whether or not those conditions are fulfilled.

In further specifying the conditions pursuant to the first subparagraph, ESMA shall set the methodology to use and the parameters to apply for deciding when a condition is considered to have been fulfilled. ESMA shall also list and specify whether there are typical extensions of services and activities that could be considered in principle to fall under the accelerated procedure set out in this Article.

www.parlament.gv.at

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 17b

Procedure for adopting decisions, reports or other measures

1. A CCP's competent authority shall submit in electronic format via the central database a request for an opinion:

   (a) by ESMA, pursuant to Article 23a(2), where the CCP's competent authority intends to adopt a decision, report or other measure in relation to Articles 7, 8, 20, 21, 29 to 33, 35, 36, 37, 41 and 54;

   (b) by the college referred to in Article 18, pursuant to Article 19, where the CCP's competent authority intends to adopt a decision, report or other measure in relation to Articles 20, 21, 30, 31, 32, 35, 37, 41, 49, 51 and 54.

   The request for an opinion referred to in the first subparagraph of this paragraph, together with all relevant documents, shall be shared immediately with ESMA and with the college referred to in Article 18.

www.parlament.gv.at

2. Unless otherwise specified under a relevant article, the CCP's competent authority shall, within 30 working days of submitting the request referred to in paragraph 1, assess the CCP's compliance with the respective requirements. By the end of that assessment period, the CCP's competent authority shall transmit its respective draft decision, report or other measure to ESMA and the college referred to in Article 18.

3. Unless otherwise specified under a relevant article, following the receipt of both the request for an opinion referred to in paragraph 1 and the draft decisions, reports or other measures referred to in paragraph 2:

   (a) ESMA shall, with respect to Article 20, adopt an opinion assessing the CCP's compliance with the respective requirements in accordance with Article 23a(1), point (e), Article 23a(2) and Article 24a(7), first subparagraph, point (bc); ESMA shall transmit its opinion to the CCP's competent authority and the college referred to in Article 18; ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management, in relation to identified cross-border risks or risks to the financial stability of the Union; ESMA shall also, with respect to Articles 21 and 37, adopt an opinion in accordance with those Articles and in accordance with Article 23a(2) and Article 24a(7), first subparagraph, point (bc), and ESMA may include in its opinion any conditions or recommendations it considers necessary;

www.parlament.gv.at

(b) ESMA may, with respect to Articles 7, 8, 29 to 33, 35, 36, 41, and 54, adopt an opinion in accordance with Article 23a and Article 24a(7), first subparagraph, point (bc), on that draft decision, report or other measure where necessary to promote a consistent and coherent application of a relevant article; and

(c) the college referred to in Article 18 shall adopt an opinion pursuant to Article 19 assessing the CCP's compliance with the respective requirements and transmit it to the CCP's competent authority and ESMA; the opinion of that college may include conditions or recommendations that it considers necessary to mitigate any shortcomings in the CCP's risk management.

For the purpose of the first subparagraph, point (b), of this paragraph, where the draft decision, report or other measure submitted to ESMA in accordance with that point shows a lack of convergence or coherence in the application of this Regulation, ESMA shall issue guidelines or recommendations to promote the necessary consistency or coherence in the application of this Regulation pursuant to Article 16 of Regulation (EU) No 1095/2010. Where ESMA adopts an opinion in accordance with point (b), the competent authority shall give it due consideration and shall inform ESMA of any subsequent action or inaction thereto.

ESMA and the college referred to in Article 18 shall each adopt their opinions within the deadline provided by the CCP's competent authority, which shall be at least 15 working days following the receipt of the relevant documents under paragraph 2 of this Article.

www.parlament.gv.at

4. Within 10 working days of receipt of the opinions of ESMA and of the college referred to in Article 18 and, where issued, the opinion of ESMA adopted under paragraph 3, first subparagraph, point (b), of this Article, or within the relevant period where otherwise specified in this Regulation, the CCP's competent authority shall, after duly considering the opinions of ESMA and of the college, including any conditions or recommendations contained therein, adopt its decision, report or other measure as required under a relevant article and transmit it to ESMA and the college.

Where the decision, report or other measure does not reflect an opinion of ESMA or of the college referred to in Article 18, including any conditions or recommendations contained therein, it shall contain full reasons and an explanation of any significant deviation from that opinion or those conditions or recommendations.

For the purpose of paragraph 3, first subparagraph, points (a) and (b), of this Article, where the CCP's competent authority does not comply or does not intend to comply with the opinion of ESMA or with any conditions or recommendations included therein, ESMA shall inform its Board of Supervisors in accordance with Article 24a. The information shall also include the reasoning from the CCP's competent authority for non-compliance or for its intention not to comply.

The CCP's competent authority shall adopt its decisions, reports or other measures in accordance with the relevant Articles set out in paragraph 1 of this Article.

www.parlament.gv.at

Article 17c

Central database

1. ESMA shall establish and maintain a central database providing access to the CCP's competent authority and ESMA ("registered recipients"), as well as to the members of the college referred to in Article 18 for the relevant CCP where required under a relevant article, to all documents registered within the database for the CCP, and to the other recipients identified under this Regulation. ESMA shall ensure that the central database performs the functions under this Article.

   ESMA shall announce the establishment of the central database on its website.

2. A CCP shall submit the applications referred to in Article 14, Article 15(1), second subparagraph, Article 49 and Article 49a via the central database. An acknowledgement of receipt shall be sent via the central database within two working days of submission of the application.

   A CCP shall upload to the central database promptly all documents it is required to provide under the authorisation processes referred to in Articles 14 and 15 or validation processes referred to in Articles 49 and 49a, as applicable. The registered recipients shall upload promptly all documents they receive from the CCP in relation to an application referred to in the first subparagraph of this paragraph unless the CCP has already uploaded such documents.

www.parlament.gv.at

A CCP shall have access to the central database as regards the documents it submitted to that central database or the documents transmitted to the CCP through that central database by any of the registered recipients or the college referred to in Article 18.

3. The competent authority shall submit its request for an opinion as referred to in Article 17b via the central database.

4. Questions submitted to, or information requested from, a CCP by ESMA, the CCP's competent authority or the members of the college referred to in Article 18 during periods for assessment under Articles 17, 17a, 17b, 49 and 49a shall be submitted and answered by the CCP via the central database.

5. The CCP's competent authority shall notify the CCP concerned via the central database where a decision, report or other measure has been taken, as applicable, pursuant to Articles 14, 15, 15a, 17, 17a, 17b, 20, 21, 30 to 33, 35, 37, 41, 49, 49a, 51 and 54 and of any decisions that the CCP's competent authority voluntarily decides to share with the CCP via the central database.

6. The central database shall be designed to automatically inform the registered recipients when changes have been made to its content, including the uploading, deletion or replacement of documents, submission of questions and requests for information.

www.parlament.gv.at

7. Members of the CCP Supervisory Committee shall have access to the central database for the performance of their tasks pursuant to Article 24a(7). The Chair of the CCP Supervisory Committee may limit access to some of the documents for the members of the CCP Supervisory Committee referred to in Article 24a(2), point (c) and point (d)(ii), where justified based on confidentiality concerns.';

(18) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Within 30 calendar days of the submission of the notification referred to in Article 17(2), second subparagraph, point (a), the CCP's competent authority shall establish a college to facilitate the exercise of the tasks referred to in Articles 15, 17, 17a, 20, 21, 30, 31, 32, 35, 37, 41, 49, 51 and 54. That college shall be co-chaired and managed by the competent authority and any of the independent members of the CCP Supervisory Committee referred to in Article 24a(2), point (b) (the "co-chairs").';

www.parlament.gv.at

(b) in paragraph 4, the second subparagraph is replaced by the following:

‘The co-chairs shall decide the dates of the college meetings and establish the agenda of such meetings.

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph of this paragraph, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting taking into consideration the outcome of the work carried out by the Joint Monitoring Mechanism.’;

(c) in paragraph 5, the third subparagraph is replaced by the following:

‘The agreement may also determine tasks to be entrusted to the CCP’s competent authority, ESMA or another member of the college. In the event of a disagreement between the co-chairs, the final decision shall be taken by the competent authority, who shall provide ESMA with a reasoned explanation of its decision.’;

www.parlament.gv.at

(19) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where the college referred to in Article 18 is required to give an opinion pursuant to this Regulation, it shall reach a joint opinion determining whether the CCP complies with the requirements laid down in this Regulation.

Without prejudice to Article 17(4), third subparagraph, point (b), if no joint opinion is reached in accordance with the first subparagraph of this paragraph, the college referred to in Article 18 shall adopt a majority opinion within the same period.’;

(b) paragraph 4 is deleted;

(20) Article 20 is replaced by the following:

‘*Article 20*
Withdrawal of authorisation

1. Without prejudice to Article 22(3), a CCP’s competent authority shall withdraw authorisation, in full or in part, where the CCP:

(a) has not made use of the authorisation within 12 months;

www.parlament.gv.at

(b) has not made use of an authorisation for a clearing service or activity in a class of derivatives, securities, other financial instruments or non-financial instruments, within 12 months of the date when the authorisation was granted or of the date when the CCP last offered such clearing service or activity;

(c) expressly renounces the authorisation;

(d) has provided no services or performed no activity for the preceding 12 months in a class of derivatives, securities, other financial instruments or non-financial instruments covered by an authorisation;

(e) has obtained authorisation by making false statements or by any other irregular means;

(f) is no longer in compliance with the conditions under which authorisation was granted and has not taken the remedial action within the set timeframe; or

(g) has seriously and systematically infringed any of the requirements laid down in this Regulation.

2. Where the CCP's competent authority withdraws the authorisation of the CCP pursuant to paragraph 1, it may limit such withdrawal of authorisation to a particular clearing service or activity in one or more classes of derivatives, securities, other financial instruments or non-financial instruments.

www.parlament.gv.at

3. Before the CCP's competent authority takes a decision to withdraw the authorisation of the CCP in full or in part, including for one or more clearing services or activities in one or more classes of derivatives, securities, other financial instruments or non-financial instruments under paragraph 1, it shall, in accordance with Article 17b, request the opinion of ESMA and the college referred to in Article 18 on the necessity of withdrawing the authorisation, in full or in part, of the CCP, except where a decision is required urgently.

4. ESMA or any member of the college referred to in Article 18 may, at any time, request that the CCP's competent authority examine whether the CCP remains in compliance with the conditions under which the authorisation was granted.

5. Where the CCP's competent authority takes a decision to withdraw the authorisation of the CCP in full or in part, including for one or more clearing services or activities in one or more classes of derivatives, securities, other financial instruments or non-financial instruments, that decision shall take effect throughout the Union and the CCP's competent authority shall inform the CCP, via the central database, without undue delay.';

www.parlament.gv.at

(21) in Article 21, paragraphs 1 to 4 are replaced by the following:

‘1. The competent authorities referred to in Article 22 shall do at least all of the following in relation to a CCP:

(a) review the arrangements, strategies, processes and mechanisms implemented by the CCP to comply with this Regulation;

(b) review the services or activities provided by the CCP, in particular services or activities provided following the application of an accelerated procedure pursuant to Article 17a or 49a;

(c) evaluate the risks, including financial and operational risks, to which the CCP is, or might be, exposed;

(d) review the changes implemented by the CCP in accordance with Article 15a.

2. The review and evaluation referred to in paragraph 1 shall cover all requirements on CCPs laid down in this Regulation. The CCP’s competent authority may request ESMA’s assistance in any of its supervisory activities including those listed in paragraph 1.

www.parlament.gv.at

3. The competent authorities shall, after having considered the input of ESMA and the college referred to in Article 18, establish the frequency and depth of the review and evaluation referred to in paragraph 1 of this Article, having particular regard to the size, systemic importance, nature, scale, complexity of the activities and interconnectedness with other financial market infrastructures of the CCPs concerned and to the supervisory priorities established by ESMA in accordance with Article 24a(7), first subparagraph, point (ba). The competent authorities shall update the review and evaluation at least on an annual basis.

CCPs shall be subject to on-site inspections by the CCP's competent authority at least annually. The CCP's competent authority shall inform ESMA of any planned on-site inspection one month before such inspection is due to take place, unless the decision to conduct an on-site inspection is taken in an emergency, in which case the CCP's competent authority shall inform ESMA as soon as that decision is taken. ESMA may request to be invited to on-site inspections.

Where, following a request by ESMA pursuant to the second subparagraph, the CCP's competent authority refuses to invite ESMA to an on-site inspection, it shall provide a reasoned explanation for such refusal.

Without prejudice to the second and third subparagraphs, the CCP's competent authority shall forward to ESMA and the members of the college referred to in Article 18 any relevant information received from the CCP in relation to all on-site inspections it carries out.

www.parlament.gv.at

4. The CCP's competent authority shall regularly, and at least annually, submit a report to ESMA and the college referred to in Article 18 on the assessment and the results of the review and evaluation referred to in paragraph 1, including whether the CCP's competent authority has requested any remedial action or imposed penalties.

The report shall cover a calendar year and shall be submitted to ESMA and the college referred to in Article 18 by 30 March of the following calendar year. That report shall be subject to an opinion of the college referred to in Article 18 pursuant to Article 19 and an opinion of ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.

ESMA may request to hold an ad hoc meeting with the CCP and its competent authority. ESMA may request such a meeting in any of the following cases:

(a) where there is an emergency situation under Article 24;

(b) where ESMA has identified material concerns regarding the CCP's compliance with the requirements of this Regulation;

(c) where ESMA considers that the activity of the CCP could have an adverse cross-border impact on its clearing members or on their clients.

The college referred to in Article 18 shall be informed that a meeting will be held and shall receive a summary of the main outcomes of that meeting.

www.parlament.gv.at

4a. ESMA may require competent authorities to provide it with the necessary information to carry out its tasks pursuant to this Article in accordance with the procedure set out in Article 35 of Regulation (EU) No 1095/2010.';

(22) Article 23a is replaced by the following:

'*Article 23a*
Supervisory cooperation between competent authorities and ESMA with regards to authorised CCPs

1. ESMA shall fulfil a coordination role between competent authorities and across colleges to:

(a) build a common supervisory culture and consistent supervisory practices;

(b) ensure uniform procedures and consistent approaches;

(c) strengthen consistency in supervisory outcomes, in particular with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact;

(d) strengthen coordination in emergency situations in accordance with Article 24;

www.parlament.gv.at

(e) assess risks when providing opinions to competent authorities pursuant to paragraph 2 on CCPs' compliance with the requirements of this Regulation in relation to identified cross-border risks or risks to the financial stability of the Union, and providing recommendations as to how a CCP shall mitigate such risks.

2. Competent authorities shall submit their draft decisions, reports or other measures to ESMA for its opinion before adopting any act or measure pursuant to Articles 7, 8 and 14, Article 15(1), second subparagraph, Article 21, Articles 29 to 33, and Articles 35, 36, 37, 41, 54 and, except where a decision is required urgently, Article 20.

Competent authorities may also submit draft decisions to ESMA for its opinion before adopting any other act or measure in accordance with their duties under Article 22(1).';

(23) the following article is inserted:

'*Article 23b*
Joint Monitoring Mechanism

1. ESMA shall establish a Joint Monitoring Mechanism for the exercise of the tasks referred to in paragraph 2.

www.parlament.gv.at

The Joint Monitoring Mechanism shall be composed of:

(a) representatives of ESMA;

(b) representatives of EBA and EIOPA;

(c) representatives of the ESRB, the ECB and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Regulation (EU) No 1024/2013; and

(d) representatives of the central banks of issue of currencies, other than the euro, in which the derivative contracts referred to in Article 7a(6) are denominated.

In addition to the entities referred to in the second subparagraph of this paragraph, the central banks of issue of the currencies of denomination of the derivative contracts referred to in Article 7a(6), other than those listed in point (d) of that second subparagraph, the national competent authorities supervising the obligation under Article 7a, limited to one per Member State, and the Commission may also participate in the Joint Monitoring Mechanism as observers.

www.parlament.gv.at

ESMA shall manage and chair the meetings of the Joint Monitoring Mechanism. The Chair of the Joint Monitoring Mechanism may, upon the request of the other members of the Joint Monitoring Mechanism or on the Chair's own initiative, invite other authorities to participate in the meetings when relevant to the topics to be discussed.

2. The Joint Monitoring Mechanism shall:

(a) monitor the implementation at aggregate Union level of the requirements set out in Articles 7a and 7c, including all of the following:

(i) the overall exposures and reduction of exposures to substantially systemically important clearing services identified pursuant to Article 25(2c);

(ii) developments related to clearing in CCPs authorised under Article 14 and access to clearing by clients to such CCPs, including fees charged by such CCPs for establishing accounts pursuant to Article 7a and any fees charged by clearing members to their clients for establishing accounts and undertaking clearing pursuant to Article 7a;

(iii) other significant developments in clearing practices having an impact on the level of clearing at CCPs authorised under Article 14;

www.parlament.gv.at

(b) monitor the cross-border implications of client clearing relationships, including portability and clearing members' and clients' interdependencies and interactions with other financial market infrastructures;

(c) contribute to the development of Union-wide assessments of the resilience of CCPs focussing on liquidity, credit and operational risks concerning CCPs, clearing members and clients;

(d) identify concentration risks, in particular in client clearing, due to the integration of Union financial markets, including where several CCPs, clearing members or clients use the same service providers;

(e) monitor the effectiveness of the measures aimed at improving the attractiveness of Union CCPs, encouraging clearing at Union CCPs and enhancing the monitoring of cross-border risks.

The bodies participating in the Joint Monitoring Mechanism, the college referred to in Article 18 and national competent authorities shall cooperate and share the information necessary to carry out the tasks referred to in the first subparagraph of this paragraph.

www.parlament.gv.at

Where that information is not available to the Joint Monitoring Mechanism, including the information referred to in Article 7a(9), the relevant competent authority of authorised CCPs, their clearing members and their clients shall provide the necessary information enabling ESMA and the other bodies participating in the Joint Monitoring Mechanism to perform the tasks referred to in the first subparagraph of this paragraph.

3. Where a relevant competent authority does not have the requested information, it shall require authorised CCPs, their clearing members or their clients to provide that information. The relevant competent authority shall forward such information to ESMA without undue delay.

4. Subject to the agreement of the relevant competent authority, ESMA may also request the information directly from the relevant entity. ESMA shall forward all information received from that entity to the relevant competent authority without undue delay.

5. Information requests to CCPs shall be exchanged via the central database.

6. ESMA shall, in cooperation with the other bodies participating in the Joint Monitoring Mechanism, submit an annual report to the European Parliament, the Council and the Commission on the results of its activities under paragraph 2.

www.parlament.gv.at

The report referred to in the first subparagraph may include recommendations for potential Union-level actions to address identified horizontal risks.

7. ESMA shall act in accordance with Article 17 of Regulation (EU) No 1095/2010 in the event that, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA:

   (a) considers that competent authorities fail to ensure clearing members' and clients' compliance with the requirements set out in Article 7a; or

   (b) identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law.

   Before acting in accordance with the first subparagraph of this paragraph, ESMA may issue guidelines or recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010.

8. Where ESMA, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, considers that compliance with the requirements set out in Article 7a does not effectively ensure the reduction of Union clearing members' and clients' excessive exposure to Tier 2 CCPs, it shall review the regulatory technical standards referred to in Article 7a(8) and, where necessary, set an appropriate adaptation period not exceeding 12 months.';

www.parlament.gv.at

(24) Article 24 is replaced by the following:

‘*Article 24*

Emergency situations

1. The CCP’s competent authority or any other relevant authority shall inform ESMA, the college referred to in Article 18, the relevant members of the ESCB, the Commission and other relevant authorities without undue delay of any emergency situation relating to a CCP, including:

(a) situations or events which impact, or are likely to impact, the prudential or financial soundness or the resilience of CCPs authorised in accordance with Article 14, their clearing members or their clients;

(b) where a CCP intends to activate its recovery plan pursuant to Article 9 of Regulation (EU) 2021/23, a competent authority has taken an early intervention measure pursuant to Article 18 of that Regulation or a competent authority has required a total or partial removal of the senior management or board of the CCP pursuant to Article 19 of that Regulation;

(c) where there are developments in financial markets, or other markets where the CCP provides clearing services, which may have an adverse effect on market liquidity, the transmission of monetary policy, the smooth operation of payment systems or the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.

www.parlament.gv.at

2. In an emergency situation, information shall be provided and updated without undue delay to enable the members of the college referred to in Article 18 to analyse the impact of that emergency situation in particular on their clearing members and their clients. The members of the college referred to in Article 18 may forward the information to the public bodies responsible for the financial stability of their markets, subject to the obligation of professional secrecy set out in Article 83. The obligation of professional secrecy in accordance with Article 83 shall apply to those bodies receiving that information.

3. In the event of an emergency situation at one or more CCPs that has or is likely to have destabilising effects on cross-border markets, ESMA shall coordinate competent authorities, the resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23 and the colleges referred to in Article 18 of this Regulation to build a coordinated response to emergency situations relating to a CCP and ensure effective information sharing among competent authorities, the colleges referred to in Article 18 of this Regulation and resolution authorities.

4. In an emergency situation, except where a resolution authority is taking or has taken a resolution action in relation to a CCP pursuant to Article 21 of Regulation (EU) 2021/23, ad hoc meetings of the CCP Supervisory Committee, to coordinate the responses of competent authorities:

   (a) may be convened by the Chair of the CCP Supervisory Committee;

www.parlament.gv.at

(b) shall be convened by the Chair of the CCP Supervisory Committee, upon the request of two members of the CCP Supervisory Committee.

5. Any of the following authorities shall also be invited to the ad hoc meeting referred to in paragraph 4, where relevant, having regard to the issues to be discussed at that meeting:

(a) the relevant central banks of issue;

(b) the relevant competent authorities for the supervision of clearing members, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Regulation (EU) No 1024/2013;

(c) the relevant competent authorities for the supervision of trading venues;

(d) the relevant competent authorities for the supervision of clients where they are known;

(e) the relevant resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23;

(f) any member of the college referred to in Article 18, that is not already covered by points (a) to (d) of this paragraph.

www.parlament.gv.at

6. Where an ad hoc meeting of the CCP Supervisory Committee is convened pursuant to paragraph 4, the Chair of that Committee shall inform EBA, EIOPA, the ESRB, the Single Resolution Board established under Regulation (EU) No 806/2014 of the European Parliament and of the Council* and the Commission thereof who shall also be invited to participate in that meeting upon their request.

   Where a meeting is held following an emergency situation as specified in paragraph 1, point (c), the Chair of the CCP Supervisory Committee shall invite the relevant central banks of issue to participate in that meeting.

7. ESMA may require all relevant competent authorities to provide it with the necessary information to carry out its coordination function provided for in this Article.

   Where a relevant competent authority has the requested information, it shall forward it to ESMA without undue delay.

   Where a relevant competent authority does not have the requested information, it shall require the CCPs authorised in accordance with Article 14, their clearing members or their clients, connected financial market infrastructures or related third parties to whom those CCPs have outsourced operational functions or activities, as relevant and applicable, to provide it with that information, and shall inform ESMA thereof. Once the relevant competent authority receives the requested information, it shall forward it to ESMA without undue delay.

www.parlament.gv.at

Instead of requiring the information referred to in the third subparagraph, the relevant competent authority may allow ESMA to require that information directly from the relevant entity. ESMA shall forward all information received from that entity to the relevant competent authority without undue delay.

Where ESMA has not received the information it required in accordance with the first subparagraph within 48 hours, it may, by simple request, require authorised CCPs, their clearing members and their clients, connected financial market infrastructures and related third parties to whom those CCPs have outsourced operational functions or activities to provide it with that information without undue delay. ESMA shall forward all information received from such entities to the relevant competent authority without undue delay.

8. ESMA may, upon the proposal of the CCP Supervisory Committee, issue recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010 addressed to one or more competent authorities recommending them to adopt temporary or permanent supervisory decisions in line with the requirements set out in Article 16 and in Titles IV and V of this Regulation to avoid or mitigate significant adverse effects on the financial stability of the Union. ESMA may issue such recommendations only where more than one CCP authorised in accordance with Article 14 is affected or where Union-wide events are destabilising cross-border cleared markets.

www.parlament.gv.at

* Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).';

(25) Article 24a is amended as follows:

(a) in paragraph 2, point (d)(ii) is replaced by the following:

'(ii) where the CCP Supervisory Committee convenes in relation to CCPs authorised in accordance with Article 14, in the context of discussions pertaining to paragraph 7 of this Article, the central banks of issue of the Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee, who shall be non-voting.';

(b) paragraph 3 is replaced by the following;

'3. The Chair may invite as observers to the meetings of the CCP Supervisory Committee, where appropriate, members of the colleges referred to in Article 18, representatives from the relevant authorities of clients, where known, and representatives from the relevant Union institutions and bodies.';

www.parlament.gv.at

(c) paragraph 7 is amended as follows:

(i) the introductory wording is replaced by the following:

'In relation to CCPs authorised or applying for authorisation in accordance with Article 14, the CCP Supervisory Committee shall, for the purpose of Article 23a, prepare decisions and carry out the tasks entrusted to ESMA in Article 23a and in the following points:';

(ii) the following points are inserted:

'(ba) at least annually, discuss and identify supervisory priorities for CCPs authorised in accordance with Article 14 of this Regulation in order to feed into the preparation of Union-wide strategic supervisory priorities by ESMA in accordance with Article 29a of Regulation (EU) No 1095/2010;

(bb) consider, in cooperation with EBA, EIOPA, and the ECB in carrying out its tasks within a single supervisory mechanism under Regulation (EU) No 1024/2013, any cross-border risks arising from CCPs' activities, including due to CCPs' interconnectedness, interlinkages and concentration risks due to such cross-border connections;

www.parlament.gv.at

(bc) prepare draft opinions for adoption by the Board of Supervisors in accordance with Articles 17 and 17b, draft validations for adoption by the Board of Supervisors in accordance with Article 49 and draft decisions for adoption by the Board of Supervisors in accordance with Article 49a;

(bd) provide input to the competent authorities pursuant to Article 17a;

(be) inform the Board of Supervisors where a competent authority does not comply or does not intend to comply with ESMA's opinions or with any conditions or recommendations contained therein, including the reasoning from the competent authority, in accordance with Article 17(3c) and Article 17b(4).';

(iii) the following subparagraph is added:

'ESMA shall on a yearly basis report to the Commission on the cross-border risks arising from CCPs' activities referred to in the first subparagraph, point (bb).';

www.parlament.gv.at

(26) in Article 24b, paragraphs 1 and 2 are replaced by the following:

‘1. With regard to supervisory assessments conducted in relation to, and decisions to be taken pursuant to, Articles 41, 44, 46, 50 and 54 in relation to Tier 2 CCPs, the CCP Supervisory Committee shall consult the central banks of issue referred to in Article 25(3), point (f). Each central bank of issue may respond. Where the central bank of issue decides to respond, it shall do so within 10 working days of receipt of the draft decision. In emergency situations, that period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to assessments related to, or draft decisions pursuant to Articles 41, 44, 46, 50 and 54, it shall provide full and detailed reasons, in writing. Upon conclusion of the period for consultation, the CCP Supervisory Committee shall duly consider the response and any amendments proposed by the central banks of issue and provide its assessment to the central bank of issue.

2. Where the CCP Supervisory Committee does not reflect in its draft decision the amendments proposed by a central bank of issue, the CCP Supervisory Committee shall inform that central bank of issue in writing stating its full reasons for not taking into account the amendments proposed by that central bank of issue, providing an explanation for any deviations from those amendments. The CCP Supervisory Committee shall submit to the Board of Supervisors the responses received and the amendments proposed by central banks of issue and its explanations for not taking them into account together with its draft decision.’;

www.parlament.gv.at

(27) Article 25 is amended as follows:

(a) in paragraph 4, the third subparagraph is replaced by the following;

‘The recognition decision shall be based on the conditions set out in paragraph 2 for Tier 1 CCPs and in paragraph 2, points (a) to (d), and paragraph 2b for Tier 2 CCPs. Within 180 working days of the determination that an application is complete in accordance with the second subparagraph, ESMA shall inform the applicant CCP in writing, with a fully reasoned explanation, whether the recognition has been granted or refused.’;

(b) in paragraph 5, the following subparagraph is inserted after the second subparagraph:

‘Where the review is undertaken in accordance with point (b) of the first subparagraph of this paragraph, the CCP shall not be required to submit a new application for recognition but shall provide ESMA with all information necessary for ESMA to review its recognition. Where ESMA undertakes a review of the recognition of a CCP established in a third country in accordance with point (b) of the first subparagraph of this paragraph, ESMA shall not treat such review as an application for recognition for the relevant recognised CCP.’;

www.parlament.gv.at

(c) in paragraph 6, the following subparagraph is added:

‘Where it is in the interests of the Union and considering the potential risks to the financial stability of the Union due to the expected participation of clearing members and trading venues established in the Union in CCPs established in a third country, the Commission may adopt the implementing act referred to in the first subparagraph irrespective of whether point (c) of that subparagraph is fulfilled.’;

(d) paragraph 7 is replaced by the following:

‘7. ESMA shall establish effective cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6.

www.parlament.gv.at

7a. Where ESMA has not yet determined the tiering of a CCP or where ESMA has determined that all or some CCPs in a relevant third country are Tier 1 CCPs, the cooperation arrangements referred to in paragraph 7 shall take into account the risk that the provision of clearing services by those CCPs entails and shall specify:

(a) the mechanism for the exchange of information on an annual basis between ESMA, the central banks of issue referred to in paragraph 3, point (f), and the competent authorities of the third countries concerned, so that ESMA is able to:

(i) ensure that the CCP complies with the conditions for recognition under paragraph 2;

(ii) identify any potential material impact on market liquidity or on the financial stability of the Union or of one or more of its Member States; and

(iii) monitor clearing activities in one, or more, of the CCPs established in such third country by clearing members established in the Union, or that are part of a group subject to consolidated supervision in the Union;

www.parlament.gv.at

(b) exceptionally, the mechanism for the exchange of information on a quarterly basis requiring detailed information covering the aspects referred to in paragraph 2a, and in particular information on significant changes to risk models and parameters, the extension of CCP activities and services and changes in the client account structure, with the aim of detecting whether a CCP is potentially close to becoming or is potentially likely to become systemically important for the financial stability of the Union or of one or more of its Member States as well as the mechanism for the exchange of information on market developments that could have consequences for the financial stability of the Union;

(c) the mechanism for prompt notification to ESMA where a third-country competent authority deems a CCP it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;

(d) the mechanism for prompt notification to ESMA by the third-country competent authority where a third-country CCP which is supervised by that competent authority intends to extend or reduce its clearing services or activities;

(e) the procedures necessary for the effective monitoring of regulatory and supervisory developments in a third country;

www.parlament.gv.at

(f) the procedures for third-country authorities to inform ESMA, the third-country CCP college referred to in Article 25c, and the central banks of issue referred to in paragraph 3, point (f), without undue delay of any emergency situations relating to the recognised CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in the Union or one of its Member States and the procedures and contingency plans to address such situations;

(g) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA in accordance with Articles 25f, 25j, Article 25k(1), point (b), and Articles 25l, 25m and 25p;

(h) the consent of third-country authorities to the onward sharing of any information they have provided to ESMA under the cooperation arrangements with the authorities referred to in paragraph 3 and the members of the third-country CCP college, subject to the professional secrecy requirements set out in Article 83.

www.parlament.gv.at

7b. Where ESMA has determined that at least one CCP in a relevant third country is a Tier 2 CCP, the cooperation arrangements referred to in paragraph 7 shall specify in relation to those Tier 2 CCPs at least the following:

(a) the elements referred to in paragraph 7a, points (a), (c), (e), (f) and (h), where cooperation arrangements are not already established with the relevant third country pursuant to that paragraph;

(b) the mechanism for the exchange of information at least on a monthly basis, as appropriate, between ESMA, the central banks of issue referred to in paragraph 3, point (f), and the competent authorities of the third countries concerned, including access to all information requested by ESMA to ensure the CCP's compliance with the requirements referred to in paragraph 2b;

(c) the procedures concerning the coordination of supervisory activities, including the agreement of third-country authorities to allow investigations and on-site inspections in accordance with Articles 25g and 25h respectively;

(d) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA in accordance with Articles 25b, 25f to 25m, 25p and 25q;

www.parlament.gv.at

(e) the procedures for third-country authorities to:

(i) consult ESMA on the preparation and assessment of recovery plans and on the preparation of resolution plans in relation to aspects relevant for the Union or one or more of its Member States;

(ii) inform ESMA without undue delay of the establishment of recovery plans and resolution plans and any subsequent material changes to those plans in relation to aspects relevant for the Union or one or more of its Member States;

(iii) inform ESMA without undue delay if a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of that Tier 2 CCP, in particular, its ability to provide clearing services or where the third-country authorities envisage taking a resolution action in the near future.

7c. Where ESMA considers that a third-country competent authority fails to apply any of the provisions laid down in a cooperation arrangement established in accordance with paragraphs 7, 7a and 7b, it shall inform the Commission thereof confidentially and without delay. In such a case, the Commission may decide to review the implementing act adopted in accordance with paragraph 6.';

www.parlament.gv.at

(28) in Article 25a, paragraph 2 is replaced by the following:

‘2. The request referred to in paragraph 1 of this Article shall provide the factual basis for a finding of comparability and the reasons why compliance with the requirements applicable in the third country satisfies the requirements set out in Article 16 and Titles IV and V. The Tier 2 CCP shall submit its reasoned request referred to in paragraph 1 in an electronic format via the central database.

ESMA shall grant comparable compliance, in part or in full, where it decides, based on the reasoned request referred to in paragraph 1 of this Article, that the Tier 2 CCP in its compliance with relevant requirements applicable in the third country is deemed compliant with the requirements set out in Article 16 and Titles IV and V and thereby satisfies the requirement for recognition under Article 25(2b), point (a).

ESMA shall withdraw, in full or in relation to a particular requirement, comparable compliance, where the Tier 2 CCP no longer complies with the conditions for comparable compliance and where such a CCP has not taken the remedial action requested by ESMA within the set timeframe. When determining the date of effect of the decision to withdraw comparable compliance, ESMA shall endeavour to provide for an appropriate adaptation period not exceeding six months.

www.parlament.gv.at

Where ESMA grants comparable compliance, it shall continue to be responsible for carrying out its duties and performing its tasks under this Regulation, in particular under Articles 25 and 25b, and shall continue to exercise its powers referred to in Articles 25c, 25d, 25f to 25m, 25p and 25q.

Without prejudice to ESMA's ability to perform its tasks under this Regulation, where ESMA grants comparable compliance, it shall agree administrative arrangements with the third-country authority in order to ensure the appropriate exchange of information and cooperation for ESMA to monitor that the requirements for comparable compliance are complied with on an ongoing basis.';

(29) in Article 25b(1), the second subparagraph is replaced by the following:

'ESMA shall require from each Tier 2 CCP all of the following:

(a) a confirmation, at least on a yearly basis, that the requirements referred to in Article 25(2b) points (a), (c) and (d), continue to be fulfilled;

(b) information and data on a regular basis to ensure that ESMA is able to supervise the CCP's compliance with the requirements referred to in Article 25(2b), point (a).';

(30) in Article 25f, paragraph 1 is replaced by the following:

‘1. ESMA may by simple request or by decision require recognised CCPs and related third parties to whom those CCPs have outsourced operational functions or activities to provide all necessary information to enable ESMA to monitor those CCPs’ provision of clearing services and activities in the Union and to carry out its duties under this Regulation.

The information referred to in the first subparagraph and requested by simple request may be of a periodic or one-off nature.’;

(31) Article 25o is replaced by the following:

‘*Article 25o*
Amendments to Annexes III and IV

In order to take account of amendments to Article 16 and Titles IV and V, the Commission is empowered to adopt delegated acts in accordance with Article 82 to ensure that the infringements under Annex III correspond to the requirements under Article 16 and Titles IV and V.

In order to take account of developments on financial markets the Commission is empowered to adopt delegated acts in accordance with Article 82 concerning measures to amend Annex IV.’;

www.parlament.gv.at

(32) Article 25p is amended as follows:

(a) in paragraph 1, point (c) is replaced by the following:

‘(c) the CCP concerned has seriously and systematically infringed any of the applicable requirements laid down in this Regulation or no longer complies with any of the conditions for recognition laid down in Article 25, and has not taken the remedial action requested by ESMA within an appropriately set timeframe of up to a maximum of one year.’;

(b) paragraph 2 is replaced by the following:

‘2. Before withdrawing the recognition in accordance with paragraph 1, point (c), ESMA shall take into account the possibility of applying measures under Article 25q(1), points (a), (b) and (c).

If ESMA determines that remedial action has not been taken within the timeframe set in accordance with paragraph 1, point (c), of this Article or that the action taken is not appropriate, and after consulting the authorities referred to in Article 25(3), ESMA shall withdraw the recognition decision.’;

www.parlament.gv.at

(33) Article 26 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘Without prejudice to interoperability arrangements under Title V or the conduct of its investment policy in accordance with Article 47, a CCP shall not be or become a clearing member, a client, or establish indirect clearing arrangements with a clearing member with the aim of undertaking clearing activities at a CCP.’;

(b) paragraph 8 is replaced by the following:

‘8. The CCP shall be subject to frequent and independent audits. The results of those audits shall be communicated to the board of the CCP and shall be made available to ESMA and to the CCP’s competent authority.’;

(34) in Article 27, the following paragraph is inserted:

‘2a. The composition of the CCP’s board shall duly take into account the principle of gender balance.’;

www.parlament.gv.at

(35) Article 28 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A CCP shall establish a risk committee, which shall be composed of representatives of its clearing members, independent members of the board and representatives of its clients. The risk committee may invite employees of the CCP and external independent experts to attend risk-committee meetings in a non-voting capacity. ESMA and competent authorities may request to attend risk-committee meetings in a non-voting capacity and to be duly informed of the activities and decisions of the risk committee. The advice of the risk committee shall be independent of any direct influence by the management of the CCP. None of the groups of representatives shall have a majority in the risk committee.’;

(b) paragraphs 4 and 5 are replaced by the following:

‘4. Without prejudice to the right of ESMA and of the competent authorities to be duly informed, the members of the risk committee shall be bound by confidentiality. Where the chairman of the risk committee determines that a member has an actual or potential conflict of interest on a particular matter, that member shall not be allowed to vote on that matter.

www.parlament.gv.at

5. A CCP shall promptly inform ESMA, the competent authority and the risk committee of any decision in which the board decides not to follow the advice of the risk committee and explain such decision. The risk committee or any member of the risk committee may inform the competent authority of any areas in which it considers that the advice of the risk committee has not been followed.';

(36) Article 30 is replaced by the following:

'*Article 30*
Shareholders and members with qualifying holdings

1. The competent authority shall not authorise a CCP unless it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

2. The competent authority shall not authorise a CCP where it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CCP, taking into account the need to ensure the sound and prudent management of a CCP. Where a college referred to in Article 18 has been established, that college shall issue an opinion as to the suitability of the shareholders or members that have qualifying holdings in the CCP, pursuant to Article 19 and in accordance with the procedure under Article 17b.

3. Where close links exist between the CCP and other natural or legal persons, the competent authority shall grant authorisation only where those links do not prevent the effective exercise of the supervisory functions.

4. Where the persons referred to in paragraph 1 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CCP, the competent authority shall take appropriate measures to terminate that situation, which may include the withdrawal of the authorisation of the CCP. The college referred to in Article 18 shall issue an opinion on whether the influence is likely to be prejudicial to the sound and prudent management of the CCP and on the measures envisaged to terminate that situation, pursuant to Article 19 and in accordance with the procedure under Article 17b.

5. The competent authority shall not authorise the CCP where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which that CCP has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions.';

www.parlament.gv.at

(37) Article 31 is amended as follows:

(a) in paragraph 2, the third and fourth subparagraphs are replaced by the following:

‘The competent authority shall, promptly and in any event within two working days of receipt of the notification referred to in this paragraph and of the information referred to in paragraph 3 of this Article, acknowledge receipt in writing thereof to the proposed acquirer or vendor and share the information with ESMA and the college referred to in Article 18.

Within 60 working days of the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 32(4) and unless extended in accordance with this Article, (“the assessment period”), the competent authority shall carry out the assessment provided for in Article 32(1) (“the assessment”). The college referred to in Article 18 shall issue an opinion pursuant to Article 19 and ESMA shall issue an opinion pursuant to Article 24a(7), first subparagraph, point (bc), and in accordance with the procedure under Article 17b during the assessment period.’;

www.parlament.gv.at

(b) in paragraph 3 the first subparagraph is replaced by the following:

‘The competent authority shall, on its own behalf and where requested by ESMA or the college referred to in Article 18, without undue delay during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request such further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.’;

(38) in Article 32(1), the fourth subparagraph is replaced by the following:

‘The assessment of the competent authority concerning the notification provided for in Article 31(2) and the information referred to in Article 31(3), shall be subject to an opinion of the college referred to in Article 18 pursuant to Article 19 and an opinion of ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.’;

www.parlament.gv.at

(39) Article 35 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

‘A CCP shall not outsource major activities linked to risk management unless such outsourcing is approved by the competent authority. The decision of the competent authority shall be subject to an opinion of the college referred to in Article 18 pursuant to Article 19 and an opinion of ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.’;

(b) paragraph 3 is replaced by the following:

‘3. A CCP shall make all information necessary available on request, to enable the competent authority, ESMA and the college referred to in Article 18 to assess the compliance of the performance of the outsourced activities with this Regulation.’;

www.parlament.gv.at

(40) Article 37 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP. Without prejudice to interoperability arrangements under Title V or the conduct of the CCP’s investment policy in accordance with Article 47, the criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP.

1a. A CCP shall accept non-financial counterparties as clearing members only if those non-financial counterparties are able to demonstrate how they intend to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

www.parlament.gv.at

The competent authority of a CCP that accepts non-financial counterparties as clearing members shall regularly review the arrangements established by the CCP to monitor that the condition under the first subparagraph is met. The CCP's competent authority shall report on an annual basis to the college referred to in Article 18 on the products cleared by those non-financial counterparties, their overall exposure and any identified risks.

A non-financial counterparty acting as a clearing member of a CCP may provide client clearing services only to non-financial counterparties belonging to the same group as that non-financial counterparty and may keep accounts at the CCP only for assets and positions held for its own account or the account of those non-financial counterparties.

ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad hoc peer review.';

(b) the following paragraph is added:

'7. ESMA, after consulting EBA and the ESCB, shall develop draft regulatory technical standards to further specify the elements to be considered when a CCP:

(a) establishes its admission criteria referred to in paragraph 1;

www.parlament.gv.at

(b) assesses the ability of non-financial counterparties acting as clearing members to meet margin requirements and default fund contributions referred to in paragraph 1a.

When developing those draft regulatory technical standards, ESMA shall take into account:

(a) the modalities and specificities through which non-financial counterparties might, or already do, access clearing services, including as direct clearing members in sponsored models;

(b) the need to facilitate prudentially sound direct access of non-financial counterparties to CCP clearing services and activities;

(c) the need to ensure proportionality;

(d) the need to ensure an effective management of risks.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’;

www.parlament.gv.at

(41) Article 38 is replaced by the following:

‘*Article 38*

Transparency

1. A CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided. They shall disclose the prices and fees of each service provided separately, including discounts and rebates and the conditions to benefit from those reductions. A CCP shall allow its clearing members and, where relevant, their clients separate access to the specific services provided.

   A CCP shall account separately for costs and revenues of the services provided and shall disclose that information to ESMA and the competent authority.

2. A CCP shall disclose to clearing members and clients the risks associated with the services provided.

3. A CCP shall disclose to ESMA, its clearing members and to its competent authority the price information used to calculate its end-of-day exposures to its clearing members.

   A CCP shall publicly disclose the volumes of the cleared transactions for each class of instruments cleared by the CCP on an aggregated basis.

www.parlament.gv.at

4. A CCP shall publicly disclose the operational and technical requirements relating to the communication protocols covering content and message formats it uses to interact with third parties, including the operational and technical requirements referred to in Article 7.

5. A CCP shall publicly disclose any breaches by clearing members of the criteria referred to in Article 37(1) and the requirements laid down in paragraph 1 of this Article, except where the competent authority, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

6. A CCP shall provide its clearing members with a simulation tool allowing them to determine the amount of additional initial margin at portfolio level that the CCP might require upon the clearing of a new transaction, including a simulation of the margin requirements that they might be subject to under different scenarios. That tool shall only be accessible on a secured access basis, and the results of the simulation shall not be binding.

www.parlament.gv.at

7. A CCP shall provide its clearing members with information on the initial margin models it uses, including methodologies for any add-ons, in a clear and transparent manner. That information shall:

   (a) clearly explain the design of the initial margin model and how it operates, including in stressed market conditions;

   (b) clearly describe the key assumptions and limitations of the initial margin model and the circumstances under which those assumptions are no longer valid;

   (c) be documented.

8. Clearing members providing clearing services and clients providing clearing services shall provide their clients with at least the following:

   (a) information on the way that the margin models of the CCP work;

   (b) information on the situations and conditions that might trigger margin calls;

   (c) information on the procedures used to establish the amount to be posted by the clients; and

   (d) a simulation of the margin requirements to which clients might be subject under different scenarios.

www.parlament.gv.at

For the purposes of point (d), the simulation of the margin requirements shall include both the margins required by the CCP and any additional margins required by the clearing members and the clients providing clearing services. The results of such simulation shall not be binding.

Upon the request of a clearing member, a CCP shall, without undue delay, provide that clearing member with the information requested to allow that clearing member to comply with the first subparagraph of this paragraph, unless such information is already provided pursuant to paragraphs 1 to 7. Where the clearing member or a client provides clearing services, and where appropriate, they shall transmit that information to their clients.

9. The clearing members of the CCP and clients providing clearing services, shall clearly inform their existing and potential clients of the potential losses or other costs that they may bear as a result of the application of default management procedures and loss and position allocation arrangements under the CCP's operating rules, including the type of compensation they may receive, taking into account Article 48(7). Clients shall be provided with sufficiently detailed information to ensure that they understand the worst-case losses or other costs they could face should the CCP undertake recovery measures.

www.parlament.gv.at

10. ESMA, in consultation with EBA and the ESCB, shall develop draft regulatory technical standards to further specify:

    (a) the requirements that the simulation tool is to comply with and the type of output to be provided pursuant to paragraph 6;

    (b) the information to be provided by CCPs to clearing members regarding transparency of margin models pursuant to paragraph 7;

    (c) the information to be provided by clearing members and clients providing clearing services to their clients under paragraphs 7 and 8; and

    (d) the requirements of the simulation of margins to be provided to clients and the type of output to be provided pursuant to paragraph 8.

    ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

    Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

www.parlament.gv.at

(42) in Article 40, the following paragraph is added:

‘Without prejudice to Article 1(4) and (5), and with the objective of facilitating central clearing by public sector entities, ESMA shall, by … [18 months from the date of entry into force of this amending Regulation], issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 specifying the method to be used by CCPs authorised under Article 14 of this Regulation for the calculation of exposures and of the contributions, if any, to the financial resources of CCPs by public sector entities participating in such CCPs, duly taking account of the mandate of public sector entities.’;

(43) in Article 41, paragraphs 1, 2 and 3 are replaced by the following:

‘1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members and, where relevant, from CCPs with which it has interoperability arrangements. Such margins shall be sufficient to cover potential exposures that the CCP considers will arise until the liquidation of the relevant positions. They shall also be sufficient to cover losses that result from at least 99 % of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and, where relevant, with CCPs with which it has interoperability arrangements, at least on a daily basis. A CCP shall continuously monitor and revise the level of its margins to reflect current market conditions taking into account any potentially procyclical effects of such revisions.

www.parlament.gv.at

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models and parameters shall be validated by the competent authority and subject to an opinion by the college referred to in Article 18 in accordance with Article 19 and an opinion of ESMA in accordance with Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.

3. A CCP shall call and collect margins on an intraday basis, at least when predefined thresholds are exceeded. In doing so a CCP shall consider, to the extent possible, the potential impact of its intraday margin collections and payments on the liquidity position of its participants and on the resilience of the CCP. A CCP shall not, to the extent possible, hold intraday variation margin payments after it has collected all such payments due.';

(44) in Article 44(1), the second subparagraph is replaced by the following:

'A CCP shall measure, on a daily basis, its potential liquidity needs. It shall take into account the liquidity risk generated by the default of at least the two entities to which it has the largest exposures and which are clearing members or liquidity providers, excluding central banks.';

www.parlament.gv.at

(45) Article 46 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members.

A CCP may, subject to the relevant conditions being met, accept public guarantees, public bank guarantees or commercial bank guarantees, provided that they are unconditionally available upon request within the liquidation period referred to in Article 41.

A CCP shall set in its operating rules the minimum acceptable level of collateralisation for the guarantees it accepts and may specify that it can accept fully uncollateralised public bank guarantees or commercial bank guarantees. A CCP may accept public guarantees, public bank guarantees or commercial bank guarantees only to cover its initial and ongoing exposure to its clearing members that are non-financial counterparties or to clients of clearing members, provided that those clients are non-financial counterparties.

www.parlament.gv.at

Where assets, public guarantees, public bank guarantees or commercial bank guarantees are provided to a CCP, that CCP shall:

(a) take into account the public bank guarantees or commercial bank guarantees when calculating its exposure to the bank, that is also a clearing member, issuing them;

(b) subject uncollateralised public bank guarantees or commercial bank guarantees to concentration limits;

(c) apply adequate haircuts to the value of assets, public guarantees, public bank guarantees and commercial bank guarantees to reflect the potential for those values to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated or exercised, as applicable;

(d) take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets in establishing the acceptable collateral and the relevant haircuts for the CCP;

(e) take into account the need to minimise any potential procyclicality effects of such revisions when revising the level of the haircuts that it applies to the assets and the public guarantees, public bank guarantees and commercial bank guarantees it accepts as collateral.';

www.parlament.gv.at

(b) paragraph 3 is replaced by the following:

‘3. ESMA, in cooperation with EBA, and after consulting the ESRB and the members of the ESCB, shall develop draft regulatory technical standards to specify:

(a) the type of collateral that could be considered highly liquid, such as cash, gold, government and high-quality corporate bonds and covered bonds;

(b) the haircuts referred to in paragraph 1, taking into account the objective to limit their procyclicality; and

(c) the relevant conditions under which public guarantees, public bank guarantees and commercial bank guarantees may be accepted as collateral under paragraph 1, including appropriate concentration limits, credit quality requirements and stringent wrong-way risk requirements for public bank guarantees and commercial bank guarantees.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

www.parlament.gv.at

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(46) Article 48 is amended as follows:

(a) paragraph 5 is replaced by the following:

'Where assets and positions are recorded in the records and accounts of a CCP as being held for the account of a defaulting clearing member's clients in accordance with Article 39(2), the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the account of all its clients to another clearing member designated by all of those clients, and shall transfer such assets and positions unless all clients object to such transfer before that transfer is concluded and without the consent of the defaulting clearing member. That other clearing member shall be obliged to accept those assets and positions only where it has previously entered into a contractual relationship with those clients by which it has committed itself to do so. If the transfer to that other clearing member has not taken place for any reason within a predefined transfer period specified in its operating rules, the CCP may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of its clients.';

www.parlament.gv.at

(b) the following paragraph is added:

‘8. In the event of default of a clearing member and where such default results in the transfer in full or in part of the assets and positions held by clients from the defaulting clearing member towards another clearing member in accordance with paragraphs 5 and 6, that other clearing member may, for three months from the date of that transfer, rely on the due diligence performed by the defaulting clearing member pursuant to Section 4 of Chapter II of Directive (EU) 2015/849 for the purpose of complying with the requirements of that Directive.

Where the clearing member to whom the transfer of assets and positions, as referred to in the first subparagraph of this paragraph, has been made is subject to Regulation (EU) No 575/2013, it shall comply with the capital requirements for exposures of clearing members towards clients under that Regulation within a period agreed with its competent authority, which shall not exceed three months from the date of that transfer.’;

www.parlament.gv.at

(47) Article 49 is amended as follows:

(a) paragraphs 1 to 1e are replaced by the following:

‘1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall obtain independent validation, shall inform its competent authority and ESMA of the results of the tests performed and shall obtain their validation in accordance with paragraphs 1a to 1e before adopting any significant change to the models and parameters.

Where a CCP intends to adopt a change to a model or parameter referred to in the first subparagraph, it shall do one of the following:

(a) where the CCP considers that the intended change is significant pursuant to paragraph 1i, it shall apply for validation of the change in accordance with the procedure laid down in this Article;

(b) where the CCP considers that the intended change is not significant pursuant to paragraph 1i of this Article, it shall apply for validation of the change in accordance with the procedure laid down in Article 49a.

www.parlament.gv.at

1a. All changes to models and parameters not assessed under Article 49a shall be assessed in accordance with the procedure laid down in this Article.

The adopted models and parameters, including any significant change thereto, shall be subject to an opinion of the college referred to in Article 18 in accordance with this Article.

ESMA shall ensure that information on the results of the stress tests is passed on to the ESAs, the ESCB and the Single Resolution Board to enable them to assess the exposure of financial undertakings to the default of CCPs.

1b. Where a CCP intends to adopt any change to a model or parameter referred to in paragraph 1, it shall submit an application for validation of such change in an electronic format via the central database. That application shall be immediately shared with the CCP's competent authority, ESMA and the college referred to in Article 18. The CCP shall enclose an independent validation of the intended change to its application.

Within two working days of submission of such application, an acknowledgement of receipt of the application shall be sent to the CCP via the central database.

www.parlament.gv.at

1c. The CCP's competent authority and ESMA shall each assess, within 10 working days of the acknowledgement of receipt of the application, whether the application contains the documents required and whether those documents contain all the information required pursuant to paragraph 5, point (d).

Where the CCP's competent authority or ESMA concludes that not all documents or information required have been submitted, the CCP's competent authority shall request the applicant CCP to submit additional documents or information that it or ESMA has identified as missing, via the central database. The timeframe set out in the first subparagraph of this paragraph may in that case be extended by a maximum of 10 working days. The application shall be rejected where the CCP's competent authority or ESMA concludes that the CCP has failed to comply with any such request and, in such a case, the authority which concluded that the application is to be rejected shall inform the other authority thereof. The CCP's competent authority shall inform the CCP of the decisions to reject the application via the central database and also inform the CCP of the documents or information identified as missing.

www.parlament.gv.at

1d. Within 40 working days of concluding that all documents and information have been submitted in accordance with paragraph 1c:

(a) the competent authority shall conduct a risk assessment of the significant change and submit its report to ESMA and the college referred to in Article 18; and

(b) ESMA shall conduct a risk assessment of the significant change and submit its report to the CCP's competent authority and the college referred to in Article 18.

During the period referred to in the first subparagraph of this paragraph, the CCP's competent authority, ESMA or any of the members of the college referred to in Article 18 may submit, via the central database, questions directly to, and request complementary information from, the applicant CCP and shall set a deadline by which the applicant CCP is to provide such information.

Within 15 working days of the receipt of the reports referred to in the first subparagraph, the college referred to in Article 18 shall adopt an opinion pursuant to Article 19 and transmit it to ESMA and the competent authority. Notwithstanding a provisional adoption in accordance with paragraph 1g, the competent authority and ESMA shall not adopt a decision granting or refusing the validation of significant changes to models or parameters until such an opinion has been adopted by the college referred to in Article 18, unless the college has not adopted that opinion within the deadline.

www.parlament.gv.at

1e. Within 10 working days of receipt of the opinion of the college referred to in Article 18, or after the expiry of the deadline for providing that opinion, whichever is earlier, the CCP's competent authority and ESMA shall each grant or refuse the validation, taking into account the reports referred to in paragraph 1d, first subparagraph of this Article, and that opinion, and shall inform each other in writing thereof, providing a fully reasoned explanation for the grant or refusal. Where the CCP's competent authority or ESMA has not validated the change, the validation shall be refused.

Where the CCP's competent authority or ESMA does not agree with the opinion of the college referred to in Article 18, including with any of the conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or those conditions or recommendations.

1f. The CCP's competent authority shall inform the CCP, within the deadline referred to in paragraph 1e, whether the validations have been granted or refused and shall provide a fully reasoned explanation therefor.

1g. The CCP may not adopt any significant change to a model or parameter referred to in paragraph 1 before obtaining validation by both its competent authority and ESMA.

www.parlament.gv.at

By way of derogation from the first subparagraph, where requested by the CCP, the competent authority, in agreement with ESMA, may allow for a provisional adoption of a significant change of a model or parameter prior to their validations where duly justified. Such a temporary change shall only be allowed for a certain period of time jointly specified by the CCP's competent authority and ESMA. After the expiry of that period, the CCP shall not be allowed to use such change unless it has been validated pursuant to this Article.

1h. Changes to parameters that are the result of applying a methodology that is part of a validated model, either due to external input or due to a regular review or calibration exercise, shall not be considered changes to models and parameters for the purpose of this Article and Article 49a.

1i. A change shall be considered significant where at least one of the following conditions is met:

(a) the change leads to a significant decrease or increase of the CCP's total pre-funded financial resources, including margin requirements, default fund and dedicated own resources as referred to in Article 45(4);

(b) the structure or the structural elements of the margin model are changed;

(c) a component of the margin model, including a margin parameter or an add-on, is introduced, removed, or amended in a manner which leads to a significant decrease or increase of the output of the margin model at the CCP level;

www.parlament.gv.at

(d) the methodology used to compute portfolio offsets is changed leading to a significant decrease or increase of the total margin requirements for the financial instruments within the portfolio;

(e) the methodology for defining and calibrating stress test scenarios for the purpose of determining the size of the CCP's default funds and the size of the individual clearing members' contributions to those default funds is changed, leading to a significant decrease or increase in the size of any of the default funds or of any individual default fund contribution;

(f) the methodology applied to assess liquidity risk is changed, leading to a significant decrease or increase of the estimated liquidity needs in any currency or the total liquidity needs;

(g) the methodology applied to determine the concentration risk a CCP has towards an individual counterparty is changed, such that the CCP's overall exposure to that counterparty decreases or increases significantly;

(h) the methodology applied to value collateral, or calibrate collateral haircuts, is changed, such that the total value of collateral decreases or increases significantly;

(i) the change could have a material effect on the overall risk of the CCP.';

www.parlament.gv.at

(b) paragraph 5 is replaced by the following:

‘5. ESMA, in close cooperation with the members of the ESCB, shall develop draft regulatory technical standards to further specify;

(a) what constitutes a significant increase or decrease for the purposes of paragraph 1i, points (a) and (c) to (h);

(b) the elements to be considered when assessing whether one of the conditions referred to in paragraph 1i is met;

(c) other changes to models that can be considered as already covered by the approved model and are therefore not considered a model change and not subject to the procedures established in this Article or Article 49a; and

(d) the lists of required documents that are to accompany an application for validation pursuant to paragraph 1c of this Article and Article 49a and the information that such documents are to contain to demonstrate that the CCP complies with all relevant requirements of this Regulation.

The required documents and level of information shall be proportionate to the type of model validation but contain sufficient detail to ensure a proper analysis of the change.

For the purposes of the first subparagraph, point (a), ESMA may set different values for the different points of paragraph 1i.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(c) the following paragraph is added:

'6. ESMA shall develop draft implementing technical standards to specify the electronic format of the application to be submitted to the central database for the validation referred to in paragraph 1b of this Article and Article 49a.

ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

www.parlament.gv.at

(48) the following article is inserted:

‘*Article 49a*

Accelerated procedure for non-significant changes to a CCP’s models and parameters

1. Where a CCP considers that a change to a model or parameter referred to in Article 49(1) that it intends to adopt does not meet the conditions set out in paragraph 1i of that Article, it may request that the application to validate the change is subject to the accelerated procedure under this Article.

2. The accelerated procedure shall apply to a proposed change to a model or parameter where the following conditions are met:

   (a) the CCP has requested a validation of a change to be assessed under this Article; and

   (b) the CCP’s competent authority and ESMA have each concluded that the proposed change is not significant pursuant to paragraph 4.

3. The CCP shall submit its application including all documents and information required pursuant to Article 49(5), point (d), in an electronic format via the central database. The CCP shall provide all information necessary to demonstrate why the proposed change is to be deemed non-significant and therefore qualifies for assessment under the accelerated procedure under this Article.

www.parlament.gv.at

An acknowledgement of receipt of the application shall be sent to the CCP via the central database within two working days of the submission of that application.

4. The CCP's competent authority and ESMA shall each decide, within 10 working days of the acknowledgement of receipt of the application, whether the proposed change is significant or not significant.

5. Where, in accordance with paragraph 4, the CCP's competent authority or ESMA has decided that the change is significant, they shall inform each other in writing thereof and the application to validate that change shall not be subject to the accelerated procedure under this Article.

   The CCP's competent authority shall notify the applicant CCP via the central database, including a fully reasoned explanation, within two working days of the decision made under paragraph 4. Within 10 working days of receipt of the notification, the CCP shall either withdraw the application or complement it to fulfil the requirements for an application under Article 49.

6. Where, in accordance with paragraph 4, the CCP's competent authority and ESMA have decided that the change is not significant, they shall each, within three working days of that decision:

   (a) grant the validation, where the CCP complies with this Regulation, or refuse it, where the CCP does not comply with this Regulation; and

www.parlament.gv.at

(b) inform each other in writing, including a fully reasoned explanation, whether the validation has been granted or refused.

Where any of them has not granted the model validation, the validation shall be refused.

7. The CCP's competent authority shall inform the applicant CCP in writing, via the central database, including a fully reasoned explanation, within two working days of the decisions made under paragraph 6 whether the validation has been granted or refused.';

(49) Article 54 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. An interoperability arrangement, or any material change to an approved interoperability arrangement under Title V shall be subject to the prior approval of the competent authorities of the CCPs involved. The CCPs' competent authorities shall request the opinion of ESMA in accordance with Article 24a(7), first subparagraph, point (bc), and the college referred to in Article 18 in accordance with Article 19, and issued in accordance with the procedure set out in Article 17b.';

www.parlament.gv.at

(b) paragraph 4 is replaced by the following:

‘4. By … [18 months from the date of entry into force of this amending Regulation], ESMA shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements by national competent authorities, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010. ESMA shall develop drafts of those guidelines or recommendations after consulting the members of the ESCB.

5. ESMA, after consulting the members of the ESCB and the ESRB, shall develop draft regulatory technical standards to further specify the requirements for CCPs to adequately manage the risks arising from interoperability arrangements. For that purpose, ESMA shall take into account the guidelines issued under paragraph 4 and assess whether the provisions included therein are appropriate in the case of interoperability arrangements covering all types of products or contracts, including derivative contracts and non-financial instruments.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Regulation].

www.parlament.gv.at

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(50) in Article 81(3), first subparagraph, the following point is added:

'(t) the national authorities entrusted with the conduct of macroprudential policy.';

(51) Article 82 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The power to adopt delegated acts referred to in Articles 1(6), Article 3(5), Article 4(3a), Article 7a(7), Article 11(3a), Article 11(12a), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70 and Article 72(3) shall be conferred on the Commission for an indeterminate period of time from … [date of entry into force of this amending Regulation].

www.parlament.gv.at

3. The delegation of power referred to in Article 1(6), Article 3(5), Article 4(3a), Article 7a(7), Article 11(3a), Article 11(12a), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70 and Article 72(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(b) paragraph 6 is replaced by the following:

'6. A delegated act adopted pursuant to Article 1(6), Article 3(5), Article 4(3a), Article 7a(7), Article 11(3a), Article 11(12a), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70 or Article 72(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.';

www.parlament.gv.at

(52) Article 85 is amended as follows;

(a) paragraph 1 is replaced by the following:

‘1. By … [five years from the date of entry into force of this amending Regulation] the Commission shall assess the application of this Regulation and prepare a general report. The Commission shall submit that report to the European Parliament and to the Council, together with any appropriate proposals.’;

(b) paragraph 2 is deleted;

(c) paragraph 4 is deleted;

(d) paragraph 7 is deleted;

(e) the following paragraphs are added:

‘7. By … [two years from the date of entry into force of this amending Regulation] ESMA shall submit a report to the Commission on the possibility and feasibility to require the segregation of accounts across the clearing chain of non-financial and financial counterparties. The report shall be accompanied by a cost-benefit analysis.

www.parlament.gv.at

8. By … [two years from the date of the entry into force of this amending Regulation], ESMA shall submit a report to the European Parliament, to the Council and to the Commission on the appropriateness and implications of extending the definition of a CCP, as referred to in Article 2, point (1), of this Regulation, to other markets beyond financial markets, such as commodity markets, including wholesale energy markets, or markets in crypto-assets under Regulation (EU) 2023/1114 of the European Parliament and Council*.

9. By … [24 months from the date of entry into force of this amending Regulation], the Commission shall submit a report to the European Parliament and the Council assessing level playing field and financial stability considerations in relation to generalised central bank access for Union CCPs without the condition of maintaining a banking licence. In that context, the Commission shall also take into consideration the situation in third-country jurisdictions.

www.parlament.gv.at

10. By … [36 months from the date of entry into force of this amending Regulation], ESMA shall submit a report to the European Parliament, the Council and the Commission on the overall activity in derivative transactions of financial counterparties and non-financial counterparties subject to this Regulation, providing, inter alia, the following information on those financial counterparties and non-financial counterparties, differentiating between their financial or non-financial nature:

(a) the potential risks to the financial stability of the Union that may arise from that type of activity;

(b) the positions in OTC commodity derivatives in excess of EUR 1 billion, specifying the exact amount of the positions concerned;

(c) the total volume of energy derivative contracts traded, distinguishing, where relevant, between those energy derivative contracts traded that are used for hedging and those energy derivative contracts traded that are not used for hedging;

(d) the total volume of agricultural derivative contracts traded, distinguishing, where relevant, between those agricultural derivative contracts traded that are used for hedging and those agricultural derivative contracts traded that are not used for hedging;

www.parlament.gv.at

(e) the share of OTC and exchange-traded energy or agriculture derivative contracts that are physically settled in the total volume of energy derivative contracts or agriculture derivative contracts traded.

11. By … [two years from the date of entry into force of this amending Regulation], ESMA, in cooperation with the ESRB, shall submit a report to the Commission. The report shall:

(a) define in detail the notion of procyclicality in the context of Article 41 for margins called by a CCP and Article 46 for haircuts applied to collateral held by a CCP;

(b) assess how the anti-procyclicality provisions of this Regulation and Commission Delegated Regulation (EU) No 153/2013[**] have been applied over the years and whether further measures are necessary to improve the use of anti-procyclicality tools;

(c) inform on how anti-procyclicality tools could or could not result in margin increases that would be greater than without the application of said tools, taking into account the potential add-ons or offsets that a CCP is allowed to apply under this Regulation.

www.parlament.gv.at

In preparing the report, ESMA shall also assess the rules applying to, and the practices of, third-country CCPs, as well as international developments concerning procyclicality.

12. By … [36 months from the date of entry into force of this amending Regulation], ESMA shall, in close cooperation with the ESRB and the Joint Monitoring Mechanism, assess how Articles 15a, 17, 17a, 17b, 49 and 49a have been applied.

In particular, that assessment shall establish:

(a) whether the changes introduced by Regulation (EU) 2024/… of the European Parliament and of the Council[***+] have obtained the desired effect with respect to increasing the competitiveness of Union CCPs and reducing the regulatory burden they face;

(b) whether the changes introduced by Regulation (EU) 2024/…[++] have reduced the time to market for new clearing services and products without negatively impacting the risk for the CCPs, their clearing members or their clients;

[+] OJ: please insert in the text the number of this Regulation and in the corresponding footnote the number, date of adoption and publication reference of that Regulation, including its ELI number.

[++] OJ: please insert in the text the number of this Regulation.

www.parlament.gv.at

(c) whether the introduction of the possibility for CCPs to implement directly changes as referred to in Article 15a has negatively impacted their risk profile or has increased the overall financial stability risks for the Union, and whether that possibility should be amended.

ESMA shall submit a report on the outcome of that assessment to the European Parliament, the Council and the Commission.

13. By … [24 months from the date of entry into force of this amending Regulation] ESMA shall submit a report to the Commission on whether the amendments to Article 9 introduced by Regulation (EU) 2024/…[+] have resulted in a sufficiently clear improvement in the conduct of ESMA's tasks and whether they have had an excessive negative impact on market participants. The report shall be accompanied by a cost-benefit analysis.

14. By … [four years from the date of entry into force of this amending Regulation], ESMA shall submit a report to the Commission. That report shall, in cooperation with the ESRB, assess whether:

(a) PTRR services should be considered systemically important;

(b) the provision of PTRR services by PTRR service providers has resulted in an increased risk for the Union financial ecosystem; and

[+] OJ: please insert in the text the number of this Regulation.

www.parlament.gv.at

(c) the exemption has resulted in any circumvention of the clearing obligation referred to in Article 4.

Within 18 months of transmission of the report referred to in the first subparagraph, the Commission shall prepare a report on the aspects presented by ESMA in its report. The Commission shall submit its report to the European Parliament and to the Council, together with any appropriate proposals.

---

* Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40).

** 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).

*** Regulation (EU) 2024/… of the European Parliament and of the Council of … amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (OJ L, …, ELI: …).';

www.parlament.gv.at

(53) in Article 89 the following paragraphs are added:

‘10. Where a CCP is a clearing member or a client of another CCP, or has established indirect clearing arrangements, before … [date of entry into force of this amending Regulation], it shall become subject to Article 26(1) on … [two years from the date of entry into force of this amending Regulation].

By way of derogation from Article 37(1), a CCP can allow other CCPs or clearing houses that were its clearing members, directly or indirectly, as of 31 December 2023 to remain its clearing members until … [two years from the date of entry into force of this amending Regulation] at the latest.

11. Until … [one year from the date of entry into force of this amending Regulation] or 30 days after the announcement referred to in Article 17c(1), second subparagraph, whichever date is earlier, the exchange of information, the submission of information and documentation, and notifications that are required to use the central database shall be carried out through the use of alternative arrangements.

www.parlament.gv.at

12. A CCP authorised under Article 14 that has entered into an interoperability arrangement in financial instruments other than transferable securities, as defined in Article 4(1), point (44), of Directive 2014/65/EU, and money-market instruments with another CCP authorised under Article 14 or a third-country CCP recognised under Article 25 before … [the date of entry into force of this amending Regulation] shall seek approval from its competent authorities in accordance with Article 54 before … [24 months from the date of entry into force of this amending Regulation].

An interoperability arrangement established between a CCP authorised under Article 14 and a CCP that is neither authorised under Article 14 or recognised under Article 25 shall be discontinued before … [six months from the date of entry into force of this amending Regulation]. If the CCP with which that interoperability arrangement is established becomes authorised under Article 14 or recognised under Article 25 before … [six months from the date of entry into force of this amending Regulation], the CCPs that are party to that interoperability arrangement shall seek approval from their competent authorities in accordance with Article 54 before … [30 months from the date of entry into force of this amending Regulation].

13. By way of derogation from Article 11(3), fourth and fifth subparagraphs, and Article 11(12a), until EBA has publicly announced that it has set up its central validation function, the validation of pro forma models shall be carried out by competent authorities.';

www.parlament.gv.at

(54) Article 90 is replaced by the following:

'*Article 90*
Staff and resources of ESMA

By … [3 years from the date of entry into force of this amending Regulation], ESMA shall assess the staffing and resource needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission.';

(55) Annex III is amended as follows:

(a) Section II is amended as follows:

(i) point (a) is replaced by the following:

'(a) a Tier 2 CCP infringes Article 26(1) by not having robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed and adequate internal control mechanisms, including sound administrative and accounting procedures or by becoming a clearing member, a client, or establishing indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at another CCP, unless such clearing activities are undertaken under an interoperability arrangement under Title V or where conducting its investment policies under Article 47;';

www.parlament.gv.at

(ii) point (ab) is replaced by the following:

‘(ab) a Tier 2 CCP infringes Article 37(1) or (2) by using, on an ongoing basis, discriminatory, opaque or subjective admission criteria, or by otherwise failing to ensure fair and open access to that CCP on an ongoing basis or by failing to ensure on an ongoing basis that its clearing members have sufficient financial resources and operational capacity to meet the obligations arising from the participation in that CCP, or by not having admission criteria that ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP, or by failing to conduct a comprehensive review of compliance by its clearing members on an annual basis;’;

(iii) the following point is inserted:

‘(aba) a Tier 2 CCP infringes Article 37(1a) by accepting non-financial counterparties as clearing members where such counterparties have not demonstrated how they intend to fulfil the margin requirements and default fund contributions, or by failing to review the arrangements established to monitor that the condition for such non-financial counterparties to act as clearing members is met;’;

www.parlament.gv.at

(b) Section III is amended as follows:

(i) point (h) is replaced by the following:

‘(h) a Tier 2 CCP infringes Article 41(1) by not imposing, calling or collecting margins to limit its credit exposures from its clearing members or, where relevant, from CCPs with which it has concluded an interoperability arrangement, or by imposing, calling or collecting margins which are not sufficient to cover potential exposures that the CCP estimates to occur until the liquidation of the relevant positions or to cover losses that result at least 99 % of the exposures movements over an appropriate time horizon or sufficient to ensure that the CCP fully collateralises its exposures with all its clearing members and, where relevant, with all CCPs with which it has concluded an interoperability arrangement, at least on a daily basis, or, by failing to continuously monitor and revise the level of margins to reflect the current market conditions taking into account any potentially procyclical effects;’;

(ii) point (j) is replaced by the following:

'(j) a Tier 2 CCP infringes Article 41(3) by not calling and collecting margins on an intraday basis, at least when predefined thresholds are exceeded or by holding intraday variation margin payments after it has collected all such payments due, instead of passing them on, where possible;’;

www.parlament.gv.at

(iii) the following point is inserted:

‘(oa) a Tier 2 CCP infringes Article 45a(1) by taking any of the actions listed under points (a), (b) and (c) of that paragraph where ESMA has required the CCP to refrain from taking any such actions for a period specified by ESMA;’;

(iv) the following point is inserted:

‘(pa) a Tier 2 CCP infringes Article 46(1) by accepting public guarantees, public bank guarantees or commercial bank guarantees, where such guarantees are not unconditionally available upon request within the liquidation period referred to in Article 41, or by not setting, in its operating rules, the minimum acceptable level of collateralisation for the guarantees it accepts, or by accepting public guarantees, public bank guarantees or commercial bank guarantees to cover exposures other than its initial and ongoing exposure to its clearing members that are non-financial counterparties or to clients of clearing members, provided that those clients of clearing members are non-financial counterparties or by, where public guarantees, public bank guarantees or commercial bank guarantees are provided to the CCP, not complying with the requirements set out under the third subparagraph, points (a) to (e), of that paragraph;’;

www.parlament.gv.at

(v) point (ai) is replaced by the following:

‘(ai) a Tier 2 CCP infringes Article 54(1) by entering into an interoperability arrangement, or making a material change to an approved interoperability arrangement under Title V, without the prior approval of ESMA;’;

(c) Section IV is amended as follows:

(i) point (g) is replaced by the following:

‘(g) a Tier 2 CCP infringes Article 38(6) by not providing its clearing members with a simulation tool allowing them to determine the amount of additional initial margin, at portfolio level, that the CCP may require upon the clearing of a new transaction, including simulation of the margin requirements that they might be subject to under different scenarios, or by not making that tool accessible on a secured access basis;’;

(ii) point (h) is replaced by the following:

‘(h) a Tier 2 CCP infringes Article 38(7) by not providing its clearing members with information on the initial margin models it uses, as detailed in points (a), (b) and (c) of that paragraph, in a clear and transparent manner;’;

www.parlament.gv.at

(iii) the following point is inserted:

‘(ha) a Tier 2 CCP infringes Article 38(8) by not providing, or providing with a significant delay, in response to a request by a clearing member, the information requested to allow that clearing member to comply with the first subparagraph of that paragraph, where such information has not already been provided.’;

(d) Section V is amended as follows:

(i) point (b) is replaced by the following:

‘(b) a Tier 2 CCP or its representatives provide incorrect or misleading answers to questions asked pursuant to point (c) of Article 25g(1);’;

(ii) point (c) is replaced by the following:

‘(c) a Tier 2 CCP infringes point (e) of Article 25g(1) by not complying with ESMA’s request for records of telephone or data traffic;’.

www.parlament.gv.at

Article 2

Amendments to Regulation (EU) No 575/2013

Article 382 of Regulation (EU) No 575/2013 is amended as follows:

(1) paragraph 4 is amended as follows:

(a) the following point is inserted:

‘(aa) intragroup transactions entered into with non-financial counterparties as defined in Article 2, point (9), of Regulation (EU) No 648/2012 which are part of the same group provided that all the following conditions are met:

(i) the institution and the non-financial counterparties are included in the same consolidation on a full basis and are subject to supervision on a consolidated basis in accordance with Part One, Title II, Chapter 2;

(ii) they are subject to appropriate centralised risk evaluation, measurement and control procedures; and

(iii) the non-financial counterparties are established in the Union or, if they are established in a third country, the Commission has adopted an implementing act in accordance with paragraph 4c in respect of that third country;’;

www.parlament.gv.at

(b) point (b) is replaced by the following:

‘(b) intragroup transactions entered into with financial counterparties, as defined in Article 2, point (8), of Regulation (EU) No 648/2012, financial institutions or ancillary services undertakings that are established in the Union or that are established in a third country that applies prudential and supervisory requirements to those financial counterparties, financial institutions or ancillary services undertakings that are at least equivalent to those applied in the Union, unless Member States adopt national law requiring the structural separation within a banking group, in which case the competent authorities may require those intragroup transactions between the structurally separated entities to be included in the own funds requirements;’;

(2) the following paragraph is inserted:

‘4c. For the purposes of paragraph 4, points (aa) and (b), the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.’.

www.parlament.gv.at

Article 3

Amendments to Regulation (EU) 2017/1131

Regulation (EU) 2017/1131 is amended as follows:

(1) in Article 2, the following point is added:

‘(24) “CCP” means a CCP as defined in Article 2, point (1), of Regulation (EU) No 648/2012*.

---

* 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) in Article 14, point (d) is replaced by the following:

‘(d) the cash received by the MMF as part of the repurchase agreement that is not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation does not exceed 10 % of its assets;

(da) the cash received by the MMF as part of the repurchase agreement that is centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation does not exceed 15 % of its assets;’;

www.parlament.gv.at

(3) Article 17 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The aggregate risk exposure to the same counterparty of an MMF stemming from derivative transactions which fulfil the conditions set out in Article 13 and which are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed 5 % of the assets of the MMF.’;

(b) paragraph 5 is replaced by the following:

‘5. The aggregate amount of cash provided to the same counterparty of an MMF in reverse repurchase agreements that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation shall not exceed 15 % of the assets of the MMF.

Where a reverse repurchase agreement is centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, the cash received by an MMF as part of each reverse repurchase agreement shall not exceed 15 % of the assets of the MMF.’;

www.parlament.gv.at

(c) in paragraph 6, first subparagraph, point (c) is replaced by the following:

‘(c) financial derivative instruments that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, giving counterparty risk exposure to that body.’.

Article 4

Amendments to Regulation (EU) No 1095/2010

In Article 1(2) of Regulation (EU) No 1095/2010, the first subparagraph is replaced by the following:

‘The Authority shall act within the powers conferred by this Regulation and within the scope of Directives 97/9/EC, 98/26/EC, 2001/34/EC, 2002/47/EC, 2004/109/EC, 2009/65/EC, Directive 2011/61/EU of the European Parliament and of the Council*, Regulation (EC) No 1060/2009 and Directive 2014/65/EU of the European Parliament and of the Council**, Regulation (EU) No 648/2012 of the European Parliament and of the Council***, Regulation (EU) 2017/1129 of the European Parliament and of the Council****, Regulation (EU) 2023/1114 of the European Parliament and of the Council***** and to the extent that those acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares, issuers or offerors of crypto-assets, persons seeking admission to trading or crypto-asset service providers and the competent authorities that supervise them, within the relevant parts of, Directives 2002/87/EC and 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

---

* Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

*** 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).

**** Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

***** Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40).’.

www.parlament.gv.at

Article 5

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from … [the date of entry into force of this amending Regulation] with the exception of Article 1, points (4) and (9) amending Articles 4a(1), (2) and (3) and Article 10(1), (2) and (3), respectively, of Regulation (EU) No 648/2012, which shall not apply until the date of entry into force of the regulatory technical standards referred to in Article 10(4) of Regulation (EU) No 648/2012 as amended by Article 1, point (9), of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, …

For the European Parliament	*For the Council*
The President	*The President*

www.parlament.gv.at