

## **Practical guidance for the recognition of Third Country CCPs by ESMA**

### **Introduction**

1. The purpose of this note is to provide information on the recognition by ESMA of Third Country CCPs (TC-CCPs) under Chapter 4 of Title III of Regulation (EU) No 648/2012<sup>1</sup> (EMIR) and Chapter II of Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 with regard to regulatory technical standards on requirements for central counterparties (RTS)<sup>2</sup>.
2. This note does not address issues related to a substantive examination of whether the conditions for recognition are met for individual TC-CCPs.

### **1. Communication with ESMA prior to the application**

#### **Handling of questions before the application**

3. In order to establish a quick and efficient way of communication between ESMA and TC-CCP applicants for recognition under Chapter 4 of Title III of EMIR, a mailbox [TC-CCP@esma.europa.eu](mailto:TC-CCP@esma.europa.eu) has been established.
4. General questions on the preparation of an application for recognition should be sent to this email address, clearly stating on behalf of which TC-CCP applicant the questions are submitted and, if possible, the planned date for the TC-CCP's application.
5. Please note that ESMA will only review and respond to general questions regarding the preparation of an application for recognition or questions regarding procedural matters that are relevant to an application for recognition. ESMA will not review or respond to questions which would require or imply a pre-assessment of any TC-CCP's application for recognition.
6. For the avoidance of doubt, ESMA does not review draft applications for recognition or parts of an application ahead of the full submission. Only the final version of a TC-CCP's application for recognition will be acknowledged, reviewed or otherwise responded to.

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<sup>1</sup> 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 27/7/2012, L201/1.

<sup>2</sup> 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 56, 23/2/2013, p.41.



### **Indication of the planned application date**

7. For organisational purposes, a TC-CCP is requested to send an email to [TC-CCP@esma.europa.eu](mailto:TC-CCP@esma.europa.eu) at least 5 working days before the date on which it intends to submit its application, indicating the planned application date. This email is for information only and is not binding on the TC-CCP applicant.

## **2. Timeframe for submission of an application**

8. According to Article 25(2) of EMIR, ESMA may only recognise a TC-CCP where certain conditions have been satisfied. In particular the European Commission needs to have adopted an implementing act determining, amongst other things, that the legal and supervisory arrangements of the jurisdiction in which the CCP is established are equivalent to the requirements laid down in EMIR (Article 25(2)(a) of EMIR) and the jurisdiction in which the TC-CCP is established needs to have equivalent systems for anti-money laundering and combating the financing of terrorism to those established in the European Union (Article 25(2)(d) of EMIR). ESMA strongly recommends that prior to submitting an application for recognition, potential applicants ascertain whether the conditions in Article 25(2) are, or are likely to be, fulfilled. This is important because if the conditions in Article 25(2) are not fulfilled then ESMA will not be able to grant the application for recognition, meaning that clearing members and trading venues established in the European Union will have to cease using the clearing services of the TC-CCP with immediate effect.
9. Under Article 89(2) of EMIR, TC-CCPs that have already been recognised to provide clearing services in the European Union, in accordance with the national law of a European Member State, are required to apply for recognition by 15 September 2013 (i.e. within six months following the entry into force of the RTS) if they wish to provide clearing services in the European Union on an uninterrupted basis. If a TC-CCP has not already been recognised to provide clearing services in the European Union, in accordance with the national law of a European Member State as of the 15 March 2013 (entry into force of the RTS), or has been so recognised but does not apply for recognition by 15 September 2013, then that TC-CCP will not be able to offer clearing services to clearing members and trading venues established in the European Union until such time as the TC-CCP's application for recognition had been granted.

## **3. Submission of an application**

### **Format of the application and number of copies**

10. A TC-CCP's application for recognition shall be submitted to ESMA by post. **Applications should not be sent by email.**
11. An applicant TC-CCP is requested to send to ESMA:
  - i.) two paper versions of its application including one original; and
  - ii.) an electronic version of its application saved on an electronic device which stores information in a durable medium, such as USB-key (preferred option), a CD-rom, or a DVD.
12. The application should be sent to: ESMA, Markets Division, CS 60747, 103 rue de Grenelle, 75345 Paris Cedex 07, France.

13. The paper version must be strictly identical to the electronic version and must be sent to ESMA together with the electronic version.
14. If requested by ESMA, the TC-CCP applicant must send certified copies of supporting documentation.
15. A unique reference number should be given to each document submitted in support of the application, and a table should be provided which clearly links the reference number of the document with the relevant article of EMIR and of the RTS in relation to which the document is provided.

#### **Language of the application**

16. According to Article 73(1) of Regulation 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority)<sup>3</sup> and Regulation 1/1958 determining the languages to be used in the European Union<sup>4</sup>, documents sent to ESMA (including applications) may be drafted in any one of the official European Union languages.
17. Nevertheless, Article 73(2) of Regulation 1095/2010 also provides that ESMA's Management Board shall decide on the internal language arrangements of ESMA and the Management Board decided that the internal working language of ESMA is English<sup>5</sup>.
18. The working language for the examination by ESMA of all TC-CCP applications will therefore be English.

#### **Information to be provided in an application**

19. Chapter II of the RTS sets out the minimum information that must be provided by a TC-CCP applying for recognition under EMIR. Please refer to:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0041:0074:EN:PDF>.

#### **4. Acknowledgment of receipt of the application**

20. An acknowledgement of receipt will be sent to the TC-CCP applicant on the working day following receipt of the application.
21. An acknowledgement of receipt does not imply that ESMA considers the application to be complete under Article 25(4) of EMIR.

#### **5. Deadlines**

22. For the calculation of deadlines referred to in EMIR, “working days” are defined as the working days of ESMA.
23. For a list of dates when ESMA is closed (and which are not considered to be working days), please refer to [http://www.esma.europa.eu/system/files/esma\\_closing\\_dates\\_2013.pdf](http://www.esma.europa.eu/system/files/esma_closing_dates_2013.pdf)

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<sup>3</sup> 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), OJ 15/12/2010, L 331/84.

<sup>4</sup> Commission Delegated Regulation (EU) No 1 of 15 April 1958, determining the languages to be used by the European Economic Community, OJ 17, 6/10/1958, p.385.

<sup>5</sup> ESMA, Decision of the Management Board, ESMA/2011/MB/3, 11 January 2011.

24. The computation of deadlines starts from the working day following the relevant event (i.e. receipt of an application, notification of completeness, receipt of additional information when the application was considered as incomplete, etc.).

## **6. Assessment of completeness, requests for additional information and notification of completeness**

25. If the application is considered as incomplete, ESMA will send a letter of incompleteness to the TC-CCP applicant, together with a list of the additional information that must be submitted.
26. ESMA will set a deadline for the additional information to be provided by the TC-CCP applicant. The standard deadline is 15 working days, extended to 30 working days if necessary due to the complexity or volume of the requested information.
27. The applicant TC-CCP can provide its response to a request for additional information in paper version or by email to [TC-CCP@esma.europa.eu](mailto:TC-CCP@esma.europa.eu).
28. ESMA will acknowledge the receipt of the additional information within one working day of its receipt.
29. Where a TC-CCP does not provide the additional information requested by ESMA within the requisite timeframe, and does not receive prior agreement from ESMA to extend the deadline, then ESMA will consider the application to have been withdrawn.
30. When the requested information is received, ESMA will assess whether the additional information causes the application to be complete. When the application is considered complete, ESMA will send a letter of completeness to the TC-CCP applicant.
31. A letter of completeness does not imply that ESMA considers that recognition will be granted.

## **7. Examination of the application**

32. If need be, requests for additional information may be sent by ESMA during the examination phase of the application. Deadlines for receiving a response from the TC-CCP may be shorter during the examination phase. In principle, the standard deadline will be 3 working days.

## **8. Decision on the registration application**

33. Pursuant to Article 25 of EMIR, a decision on recognition will be adopted within 180 working days from notification by ESMA that a TC-CCP's application is considered to be complete.
34. The decision on the TC-CCP's application will be adopted by ESMA's Board of Supervisors after consultation with the authorities and entities referred to in Article 25(3) of EMIR.
35. The decision shall take effect on the fifth working day following its adoption.

## 9. Publication on ESMA's website

36. Pursuant to Article 25(4) of EMIR, ESMA shall publish on its website a list of TC-CCPs that have been recognised by ESMA.

## 10. Notification of material changes

37. According to Article 25(5) of EMIR, ESMA shall withdraw the recognition of a TC-CCP where that TC-CCP:

- i.) no longer meets the conditions under which it was recognised;
- ii.) has seriously or systematically infringed any of the requirements of EMIR;
- iii.) has obtained recognition by making false statements or by any other irregular means; or
- iv.) has not made use of the recognition within 12 months (i.e. has not provided clearing services to a trading venue or clearing member established in the European Union).

38. In light of these provisions, TC-CCPs are encouraged to notify ESMA in advance in the event that they wish to change the range of activities and services that they provide in the European Union, or to implement a change which will affect compliance with the conditions on which recognition was granted or any other change which might affect the TC-CCP's continued recognition by ESMA. Such changes should be notified to ESMA by email to [TC-CCP@esma.europa.eu](mailto:TC-CCP@esma.europa.eu).