



Council of the  
European Union

Brussels, 12 April 2021  
(OR. en)

7730/21

EF 127  
ECOFIN 323  
FSC 6

#### COVER NOTE

---

From: Mr Steven MAJOOR, Chair of the European Securities and Markets Authority (ESMA)

date of receipt: 9 April 2021

To: Ms Mairead McGUINNESS, Commissioner

---

Subject: ESMA's draft RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the CCP's models and parameters are significant, and the procedures for consulting the college on whether or not those conditions are met (Articles 15(3) and 49(5) of EMIR)

---

Delegations will find attached a letter regarding the subject mentioned above.

The full report in annex can be viewed on ESMA's website:

<https://www.esma.europa.eu/file/112521/download?token=B6bTUogj>

---

Encl.:

E-MAIL



Received on  
08.04.2021

IM 003767 2021  
09.04.2021

ESMA REGULAR USE

The Chair  
31 March 2021  
ESMA91-372-1419

**Ms Mairead McGuinness  
Commissioner for Financial Stability,  
Financial Services and  
the Capital Markets Union  
European Commission  
1049 Brussels  
Belgium**

**Ref: ESMA's draft RTS on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the CCP's models and parameters are significant, and the procedures for consulting the college on whether or not those conditions are met (Articles 15(3) and 49(5) of EMIR)**

Dear Commissioner McGuinness, *dear Mairead,*

I am writing to you to submit ESMA's final report and draft Regulatory Technical Standards (RTS) (ESMA70-151-3373), referred to above, to the Commission for adoption.

ESMA's proposals are based on the mandates in Articles 15(3) and 49(5) of Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR), which have been introduced by Regulation (EU) No 2019/2099 of the European Parliament and of the Council of 23 October 2019 (EMIR 2.2).

Considering the similarities of the two mandates, and in the interest of efficiency and consistency, the final report provides the final draft RTS for both.

In developing these final draft RTS, ESMA took into account and built upon the convergence instruments already adopted in the past<sup>1</sup> as well as the ESMA's experience within EMIR colleges and the feedback of the public consultation (held in accordance with Article 10(1) of the ESMA Regulation). A cost benefit analysis is also provided.

---

<sup>1</sup> ESMA Opinion on Common indicators for new products and services under Article 15 and for significant changes under Article 49 of EMIR (ESMA/2016/1574, 15 November 2016).

Regarding the conditions under which additional services and activities require an extension of authorisation (Article 15(3) of EMIR), ESMA has adopted a flexible and pragmatic approach by dividing the conditions into criteria and into indicators. As per the mandate, both the criteria and indicators are subject to a college consultation on whether the conditions for extension of authorisation are met. However, while the criteria are subject to a simplified college consultation procedure, the indicators are subject to more extensive college consultation procedure.

Regarding the conditions under which changes to the CCP's models and parameters are significant (Article 49(5) of EMIR), ESMA has decided to mirror the approach used for Article 15(3) of EMIR. ESMA considers that subjecting the criteria and indicators for significant changes to the CCP's model and parameters to a college consultation is a necessary, adequate and proportionate procedural step to enhance the achievement of the goals of Article 49(5) of EMIR. In addition, ESMA is of the view that it is important to achieve consistency with the processes for extension of authorisation under Article 15 of EMIR.

In finalising the draft RTS, in accordance with Article 15(3) of EMIR, ESMA cooperated with the European System of Central Banks (ESCB), and in accordance with Article 49(5), ESMA consulted EBA, other relevant competent authorities and the members of the ESCB. ESMA also sought advice from the Securities and Markets Stakeholder Group.

Should you or your staff want to discuss further the subject matter of the report or require any further information, please do not hesitate to reach out to Mr. Klaus Löber, Chair of the CCP Supervisory Committee ([klaus.loeber@esma.europa.eu](mailto:klaus.loeber@esma.europa.eu)).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. Maijor'.

Steven Maijor

CC: Ms Irene Tinagli, MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament  
Mr João Leão, President of the ECOFIN Council, Council of the European Union  
Mr John Berrigan, Director General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission  
Mr Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union  
Mr Klaus Löber, Chair of the CCP Supervisory Committee, ESMA