

Practical Guidance

For the recognition of third-country CCPs by ESMA

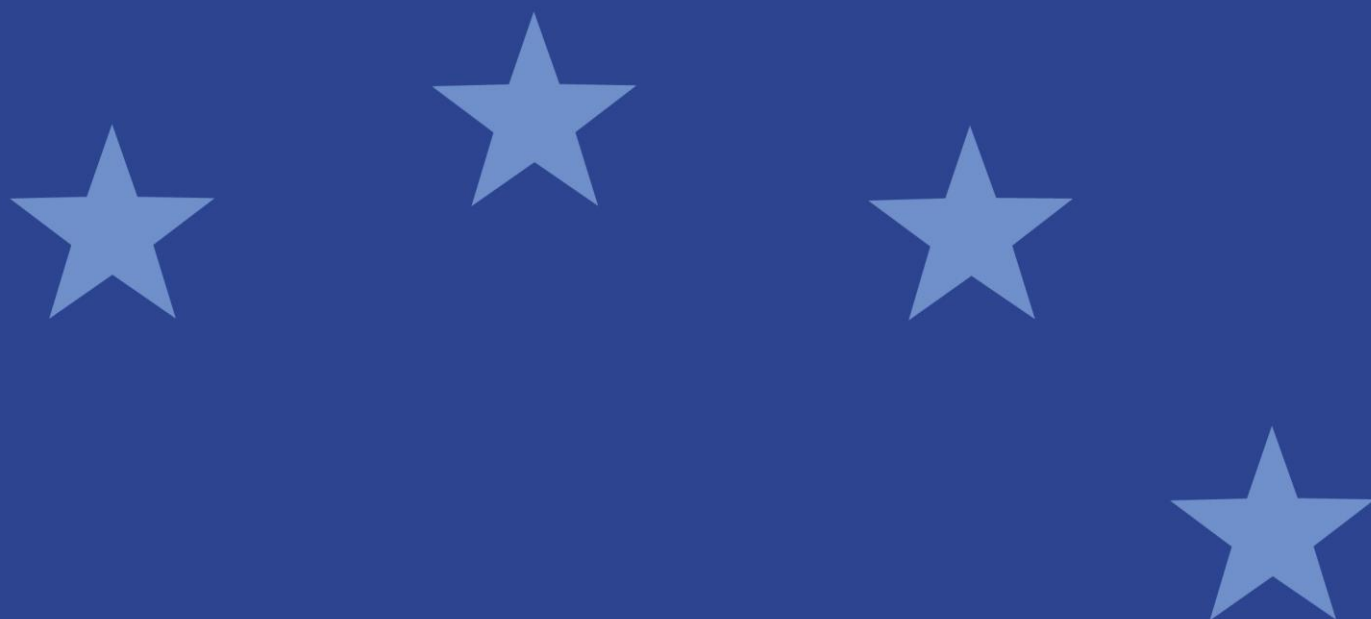


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1 Introduction

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 648/2012¹ (EMIR) and Chapter II of Commission Delegated Regulation (EU) No 153/2013 (EMIR RTS)², and where relevant Commission Delegated Regulation (EU) No 2020/1303³ (the Tiering DA) and Commission Delegated Regulation (EU) No 2020/1304⁴ (the Comparable Compliance DA).
2. This guidance does not address issues related to a substantive examination of whether the conditions for recognition are met for individual TC-CCPs.

2 Communication with ESMA prior to the application

2.1 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 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.

¹ 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, 27.7.2012m p.1.

² 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.

³ Commission Delegated Regulation (EU) 2020/1303 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States, OJ L 305, 21.9.2020, p. 7–12.

⁴ 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. 13–26.

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-CCP⁷ application for recognition will be acknowledged, reviewed or otherwise responded to.

2.2 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 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.

3 Conditions for recognition

8. In accordance with Article 25(2) of EMIR, the recognition of a TC-CCP may only be granted where the four conditions listed in paragraphs (a) to (d) of Article 25(2) of EMIR are fulfilled, namely:
 - the European Commission has 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);
 - the applicant TC-CCP is authorised in the relevant third country, and subject to effective supervision and enforcement ensuring full compliance with the prudential requirements applicable in that third country (Article 25(2)(b) of EMIR);
 - cooperation arrangements have been established between ESMA and the relevant competent authorities of the third country (Article 25(2)(c) of EMIR); and
 - the jurisdiction in which the TC-CCP is established has 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).
9. ESMA therefore strongly recommends that prior to submitting an application for recognition, potential applicants ascertain whether the conditions in Article 25(2)(a)-(d) are, or are likely to be, fulfilled. Indeed if the conditions in Article 25(2)(a)-(d) are not fulfilled at time of recognition, ESMA will not be able to grant the recognition and will have no choice but to reject the application.
10. Moreover, pursuant to Article 25(2a) of EMIR, prior to the recognition of a TC-CCP ESMA shall determine whether the applicant TC-CCP is systemically important or likely to become systemically important for the financial stability of the Union or of one of its Member States (i.e. a Tier 2 CCP).

4 Submission of an application

4.1 Format of the application

11. Applications should be submitted to ESMA in a durable medium. Applicants TC-CCPs are not required to submit their application on paper. However, if an applicant CCP intends to submit its application on paper, it should send to ESMA (i) one hard copy of its application and (ii) the electronic version of its application. The electronic version must be strictly identical to the paper version.
12. Applications for recognition can be submitted in the following ways:
 - Email attachments containing encrypted documents or archives, using the relevant mailbox: TC-CCP@esma.europa.eu
 - Through a dedicated online and secure documents repository, set up by the applicant CCP;
 - By post to the following address, marking the envelope as CONFIDENTIAL: ESMA, CCP Directorate, 201-203 rue de Bercy, CS 80910, 75589 Paris Cedex 12.
13. If the electronic version of the application is sent by post, it can be stored in an electronic storage medium such as memory sticks, CDs, DVDs, etc. In addition, please ensure that the content of the storage medium is appropriately secured, e.g. encrypted.
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.

4.2 Language of the application

16. Documents sent to ESMA (including applications) should be drafted in English and the working language for the examination by ESMA of all TC-CCP applications will also be English.

4.3 Information to be provided in an application

17. Upon request from the applicant TC-CCP, ESMA will provide a detailed list ("Data request") of the expected minimum information that should be provided within the TC-CCP application, including the format under which data should be presented.

18. 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/legal-content/EN/TXT/?qid=1450770258425&uri=CELEX:32012R0648>

19. Please note that entities can apply for recognition under Article 25 of EMIR only if they are established in a third-country and if they meet the definition of a central counterparty provided in Article 2(1) of EMIR⁵. The application should provide clear evidence that the applying entity meets this definition.

20. With regards to that information which should be provided under sub-paragraph (k), of Chapter II of the RTS, an applicant TC-CCP should note that there are two limbs to this requirement. The first is a requirement to provide a copy of the rules and internal procedures of the CCP. The second is a requirement to provide evidence of the TC-CCP's full compliance with the requirements applicable in the third country.

21. In respect of this second limb, a TC-CCP is not expected to provide a copy of all of the requirements to which the TC-CCP is subject (i.e. all of the legislation, rules of the relevant competent authorities, or other legally binding material). Instead, it is expected that applicant TC-CCPs will provide ESMA with a letter from their relevant competent authorities confirming that the TC-CCP complies with the requirements applicable in that third country.

22. Where the implementing act adopted in accordance with Article 25(6) contains specific conditions to the recognition of the TC-CCP, the TC-CCP must provide the relevant information demonstrating that such conditions are fulfilled.

23. In addition, for the purpose of the tiering determination, the applicant TC-CCP shall provide all information necessary to assess the elements described under Articles 1(1), 2(1), 3(1), 4(1), 5(1) and 6(1) of Delegated Regulation (EU) 2020/1303 of 14 July 2020 ("the Tiering DA"):

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1303>

24. Where any of the indicators referred to in Article 6 of the Tiering DA applies, the applicant CCP should also provide all information necessary to assess:

25. the elements described under Articles 1(3), 2(2), 3(2), 4(2) and 5(2) of the Tiering DA;

26. that the conditions listed in paragraphs (a) to (e) of Article 25(2b) of EMIR are also fulfilled.

27. Where the CCP intends to submit a reasoned request comparable compliance under Article 25a in accordance with Delegated Regulation (EU) 2020/1304 of 14 July 2020 ("comparable compliance DA"), the applicant CCP should complement its application with

⁵ 'CCP' means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

the reasoned request for the purpose of assessing its compliance with the requirements set out in Article 16 and in Titles IV and V of EMIR (condition Article 25(2b) (a)).

5 Acknowledgement of receipt of the application

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

6 Deadlines

30. For the calculation of deadlines referred to in EMIR, “working days” are defined as the working days of ESMA.
31. For a list of dates when ESMA is closed (and which are not considered to be working days), please refer to ESMA’s [“Contact info”](#) page.
32. The computation of deadlines starts from the working day following the relevant event (e.g. receipt of an application, notification of completeness, receipt of additional information when the application was considered as incomplete).
33. In accordance with Article 25 of EMIR, the following deadlines shall apply to the recognition process:
- The assessment of completeness will be done within 30 working days of receipt of the application;
 - ESMA will inform the applicant CCP whether or not it is considered to be a Tier 1 or a Tier 2 CCP within 30 working days following the determination of completeness;
 - The decision to grant or refuse the recognition of a TC-CCP will be taken within 180 working days following the determination of completeness.

7 Assessment of completeness, requests for additional information and notification of completeness

34. In accordance with Article 25(4), ESMA will confirm whether the TC-CCP’ application is considered as complete within 30 working days from the receipt of the application.
35. If the application is considered as incomplete, ESMA will send a letter of incompleteness to the TC-CCP applicant, together with a list of additional information that must be submitted.

36. ESMA will set a deadline for the additional information to be provided by the TC-CCP applicant. The standard deadline is 30 working days, extended to 90 working days if necessary due to the complexity or volume of the requested information.
37. The applicant TC-CCP can provide its response to a request for additional information by email to TC-CCP@esma.europa.eu.
38. ESMA will acknowledge the receipt of the additional information within two working days of its receipt.
39. 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 may consider the application to have been withdrawn.
40. When the requested information is received, ESMA will assess whether the additional information is sufficient for the application to be complete. When the application is considered complete, ESMA will send a letter of completeness to the TC-CCP applicant.
41. A letter of completeness does not imply that ESMA considers that recognition will be granted.

8 Examination of the application

42. 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.

9 Decision on the tiering determination

43. Pursuant to Article 25(2a) of EMIR, a decision on the tiering determination of an applicant TC-CCP will be adopted within 30 working days from notification by ESMA that a TC-CCP's application is considered to be complete.
44. The tiering decision will be adopted by ESMA's Board of Supervisors, after consultation with the authorities and entities referred to in Article 25(2a) of EMIR and notified to the applicant TC-CCP.

10 Decision on the recognition

45. Pursuant to Article 25(4) 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.

46. 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 and notified to the applicant TC-CCP.

11 Review of recognition

47. In accordance with Article 25(5) of EMIR, ESMA shall review the recognition of a TC-CCP if that CCP intends to extend or reduce the range of its activities and services in the Union, and in any case at least every five years.
48. For the purpose of this review, the recognized TC-CCP shall submit the same application as referred to in Section 4 of this document. Where applicable, the applicant TC-CCP may only provide an updated version of its initial application for recognition.

12 Publication on ESMA's website

49. Pursuant to Article 25(4) of EMIR, ESMA publishes on its website the [list of recognised third-country CCPs](#), indicating their classification as Tier 1 CCPs or Tier 2 CCPs.
50. ESMA also published on its website a [list of third-country CCPs that have applied for recognition](#)⁶. This list includes only those TC-CCPs which have applied for recognition under Article 25 of EMIR and which expressly agreed to have their name mentioned publicly. In the application for recognition as a TC-CCP under EMIR, please indicate whether you consent to being included in the list to be published on ESMA's website.

13 Fees

51. In accordance with Article 25d of EMIR, ESMA charges a recognition fee for each application for recognition received. Once recognised, TC-CCPs are also required to pay an annual fee.
52. The amount of the recognition and annual fees depend on the tiering determination made by ESMA. The details of the fees calculation are specified in the [Commission Delegated Regulation \(EU\) 2020/1302 of 14 July 2020](#).
53. Upon receipt of an application for recognition, a financial identification form will be sent to the applicant TC-CCP in order to prepare the invoicing.

⁶ This list is not necessarily exhaustive and remains subject to further updates. The list is provided for information purposes only and is without prejudice to any future ESMA's decision on the recognition of applicant CCPs.