



**2022/0403(COD)**

13.6.2023

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a 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  
(COM(2022)0697 – C9-0412/2022 – 2022/0403(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Danuta Maria Hübner

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a 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 (COM(2022)0697 – C9-0412/2022 – 2022/0403(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0697),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0412/2022),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation**

##### **Recital 2**

*Text proposed by the Commission*

(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

*Amendment*

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functioning of Union capital markets and is a cornerstone of the Union's financial stability. 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 single market.

functioning of Union capital markets and is a cornerstone of the Union's financial stability. It is therefore necessary to lay down further rules to improve the efficiency *and competitiveness* 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 single market.

Or. en

## Amendment 2

### Proposal for a regulation

#### Recital 4

##### *Text proposed by the Commission*

(4) Central clearing is a global business and Union market participants are active internationally. However, since the Commission adopted the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and 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 in 2017<sup>27</sup>, concerns have been expressed repeatedly, including by the European Securities and Markets Authority (ESMA)<sup>28</sup>, about the ongoing risks to the Union financial stability arising from the excessive concentration of clearing in some third-country CCPs, in

##### *Amendment*

(4) Central clearing is a global business and Union market participants are active internationally. However, since the Commission adopted the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and 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 in 2017<sup>27</sup>, concerns have been expressed repeatedly, including by the European Securities and Markets Authority (ESMA)<sup>28</sup>, about the ongoing risks to the Union financial stability arising from the excessive concentration of clearing in some third-country CCPs, in

particular due to the potential risks that can arise in a stress scenario. In the short-term, to mitigate the risk of cliff edge effects related to the withdrawal of the UK from the Union due to an 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 their excessive exposures to systemic CCPs outside the Union in the medium term. The Commission reiterated that call in its communication "The European economic and financial system: fostering openness, strength and resilience"<sup>29</sup> in January 2021. The risks and effects of excessive exposures to systemic CCPs outside the Union were considered in the report published by ESMA in December 2021<sup>30</sup> following an assessment conducted in accordance with Article 25(2c) of Regulation (EU) No 648/2012. That report concluded that some services provided by those 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 Union financial stability. 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 those third-country CCPs that present less risks for the financial stability of the Union, it is necessary to further tailor the framework introduced by Regulation (EU) 2019/2099 to the risks presented by different third-country CCPs.

particular due to the potential risks that can arise in a stress scenario. In the short-term, to mitigate the risk of cliff edge effects related to the withdrawal of the UK from the Union due to an 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 their excessive exposures to systemic CCPs outside the Union in the medium term. The Commission reiterated that call in its communication "The European economic and financial system: fostering openness, strength and resilience"<sup>29</sup> in January 2021. The risks and effects of excessive exposures to systemic CCPs outside the Union were considered in the report published by ESMA in December 2021<sup>30</sup> following an assessment conducted in accordance with Article 25(2c) of Regulation (EU) No 648/2012. That report concluded that some services provided by those 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 Union financial stability. 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 those third-country CCPs that present less risks for the financial stability of the Union, it is necessary to further tailor the framework introduced by Regulation (EU) 2019/2099 to the risks presented by different third-country CCPs. ***At the same time, it is necessary that the changes are well calibrated, in light of the potential impact of regulatory measures on the competitiveness of Union's market participants.***

<sup>27</sup> COM(2017)331.

<sup>28</sup> ESMA Report “Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd”, 16 December 2021, ESMA91-372-1945.

<sup>29</sup> Communication from the Commission of 19 January 2021 to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: “The European economic and financial system: fostering openness, strength and resilience” (COM(2021) 32 final).

<sup>30</sup> ESMA Report “Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd”, 16 December 2021, ESMA91-372-1945.

<sup>27</sup> COM(2017)331.

<sup>28</sup> ESMA Report “Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd”, 16 December 2021, ESMA91-372-1945.

<sup>29</sup> Communication from the Commission of 19 January 2021 to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: “The European economic and financial system: fostering openness, strength and resilience” (COM(2021) 32 final).

<sup>30</sup> ESMA Report “Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd”, 16 December 2021, ESMA91-372-1945.

Or. en

### Amendment 3

#### Proposal for a regulation Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) Post-trade risk reduction services (PTRR services) generate non price-forming transactions to reduce risk in derivatives portfolios without changing the market risk. PTRR services include portfolio compression, portfolio optimisation or rebalancing services. PTRR services reduce systemic risk and operational risk, and are therefore a valuable tool to improve the resilience of the derivative market. As explained by ESMA in its Report to the European Commission on post trade risk reduction services with regards to the clearing obligation (EMIR Article 85(3a))<sup>1a</sup>, submitted in November 2020, as well as in its letter to the Commission of 1 April 2022<sup>1b</sup>, the application of the clearing***



*obligation to transactions resulting from PTRR services limits the use of these services to uncleared portfolios, and can lead to an increase in the use of complex products that are not subject to the clearing obligation. To facilitate the use of PTRR services, a targeted and conditional exemption to the clearing obligation for transactions resulting from PTRR services should be introduced. Such exemption should regard only the risk neutral transactions resulting from the PTRR exercise, while it would leave the original trades, on which the risk reduction exercises is performed, subject to the clearing obligation when applicable. In this way, the recommended exemption would remove barriers to the use of the PTRR services in portfolios to be cleared, enable a broader range of counterparties to have access to these risk reduction techniques, and reduce market complexity. By facilitating risk reduction, a larger use of PTRR services would decrease collateral requirements for counterparties, and thus improve the overall availability of liquidity in the EU derivative market. To avoid the circumvention of the clearing obligation, the exemption should be targeted and conditional, i.e. limited to PTRR services which mitigate or reduce risks, performed by a third party PTRRS service provider independently and under certain conditions. ESMA should be mandated to develop regulatory technical standards to further specify and ensure the uniform application of such conditions. In addition, to ensure that ESMA and NCAs can carry out their supervisory tasks in relation to the clearing obligation, counterparties should notify their intention to apply the exemption.*

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1a

[https://www.esma.europa.eu/sites/default/files/library/esma70-156-3351\\_report\\_on\\_ptrr\\_services\\_with\\_regar](https://www.esma.europa.eu/sites/default/files/library/esma70-156-3351_report_on_ptrr_services_with_regar)

## **Amendment 4**

### **Proposal for a regulation**

#### **Recital 10**

##### *Text proposed by the Commission*

(10) 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 Article 25(2c) of 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 interest rate derivatives denominated in euro and Polish zloty, Credit Default Swaps (CDS) denominated in euro and Short-Term Interest Rate Derivatives (STIR) denominated in euro, are of substantial systemic importance for the Union or 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 Union financial stability. Furthermore, disruptions in markets relevant for monetary policy

##### *Amendment*

(10) 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 Article 25(2c) of 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 interest rate derivatives denominated in euro and Polish zloty, Credit Default Swaps (CDS) denominated in euro and Short-Term Interest Rate Derivatives (STIR) denominated in euro, are of substantial systemic importance for the Union or 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 Union financial stability. 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 any*** financial counterparties and non-financial counterparties that are subject to the clearing obligation to hold, directly or indirectly, accounts ***with a minimum level of activity*** at CCPs established in the Union. That requirement should reduce the ***provision*** of those clearing services by those Tier 2 CCPs ***to a level where such clearing is no longer*** of substantial systemic importance.

implementation may hamper the transmission mechanism critical to central banks of issue. ***Measures requiring*** financial counterparties and non-financial counterparties that are subject to the clearing obligation to hold, directly or indirectly, ***and regularly clear through*** accounts at CCPs established in the Union ***seem therefore appropriate in order to gradually reduce the systemic reliance on third-country CCPs***. That requirement should ***be calibrated in a way that would gradually*** reduce the ***substantial systemic importance*** of those clearing services by those Tier 2 CCPs. ***In light of recent market developments, it is also appropriate that the requirement only applies to interest rate derivatives denominated in euro and Polish zloty and Short-Term Interest Rate Derivatives (STIR) denominated in euro, in addition to any other clearing service deemed to be of substantial systemic importance by ESMA in its future assessments pursuant to Article 25(2c) of Regulation (EU) No 648/2012.***

Or. en

## Amendment 5

### Proposal for a regulation Recital 10 a (new)

*Text proposed by the Commission*

*Amendment*

***(10a) It is appropriate, given the novelty of the requirement and its potential impact on the competitiveness of EU clearing members and clients, that the obligation requiring financial counterparties and non-financial counterparties that are subject to the clearing obligation to hold, directly or indirectly, accounts at CCPs established in the Union and regularly clear through those accounts products of substantial***

*systemic importance is phased-in gradually. Initially, financial and non-financial counterparties should be required to exchange initial and variation margins in an account at a CCP established in the Union, and to regularly enter into new positions on that same account. Given the diversity of market participants in the Union, and their different levels of clearing activity, the frequency with which they are required to enter into new positions should be established by ESMA, and should be calibrated in such a way as not to significantly alter the normal conduct of business of those counterparties. It is also appropriate that the requirement only applies to such derivative contracts that are entered into after the entry into force of this Regulation, as to not compromise the existing positions of the counterparties subject to the requirement.*

Or. en

## Amendment 6

### Proposal for a regulation

#### Recital 11

*Text proposed by the Commission*

(11) It is necessary to ensure that the calibration of the level of the clearing activity to be maintained in accounts at Union CCPs can be adapted to changing circumstances. *ESMA has* an important role in the assessment of the substantial systemic importance of third-country CCPs and their clearing services. ESMA, in cooperation with the *European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA)* and the ESRB, and after *having consulted the European System of Central Banks (ESCB)*, should *therefore* develop draft regulatory technical standards

*Amendment*

(11) It is necessary to ensure that the calibration of the level of the clearing activity to be maintained in accounts at Union CCPs can be adapted to changing circumstances, *and can be adjusted in light of the effectiveness, or lack thereof, of the introduction of the requirement. ESMA and the Joint Monitoring Mechanism introduced in this Regulation have* an important role in the assessment of the substantial systemic importance of third-country CCPs and their clearing services *and of the broader functioning of the Union's clearing ecosystem. Following the introduction of the*

specifying *the details of the level* of substantially systemic clearing services to be maintained in the active accounts in Union CCPs by financial and non-financial counterparties subject to the clearing obligation. Such calibration should not go beyond what is necessary and proportionate to reduce clearing in the identified clearing services at Tier 2 CCPs concerned. In that regard, ESMA should consider the costs, risks and the burden such calibration entails for financial and non-financial counterparties, the impact on their competitiveness, and the risk that those costs are passed on to non-financial firms. Furthermore, ESMA should also ensure that the envisaged reduction in clearing in those instruments, identified as of substantial systemic importance, results in them *no longer being considered of* substantial systemic importance when ESMA reviews the recognition of the relevant CCPs which according to Article 25(5) of that Regulation and where such a review should be done at least every five years. In addition, suitable phase-in periods for the progressive implementation of the requirement to hold a certain level of the clearing activity in the accounts at Union CCPs should be foreseen.

*requirement to clear a proportion of derivative contracts at active accounts, ESMA, in cooperation with the Joint Monitoring Mechanism, should assess whether that requirement is sufficient to achieve its alleged objectives, namely to mitigate, or be, in the absence of further measures, likely to mitigate, 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 of substantial systemic importance. As a secondary objective, that assessment should also consider whether the competitiveness of Union clearing members and clients has not been negatively impacted by the introduction of that requirement. Where that assessment leads to the conclusion that further measures are necessary, ESMA, in cooperation with EBA, EIOPA and the ESRB and after consulting the ESCB, should develop draft regulatory technical standards specifying a specific proportion of substantially systemic clearing services to be maintained in the active accounts in Union CCPs by financial and non-financial counterparties subject to the clearing obligation. Such calibration should not go beyond what is necessary and proportionate to reduce clearing in the identified clearing services at Tier 2 CCPs concerned. In that regard, ESMA should consider the costs, risks and the burden such calibration entails for financial and non-financial counterparties, the impact on their competitiveness, and the risk that those costs are passed on to non-financial firms. Furthermore, ESMA should also ensure that the envisaged reduction in clearing in those instruments, identified as of substantial systemic importance, results in them *reducing their* substantial systemic importance when ESMA reviews the recognition of the relevant CCPs which according to Article 25(5) of that Regulation and where such a review should be done at least every five years. In*

addition, suitable phase-in periods for the progressive implementation of the requirement to hold a certain level of the clearing activity in the accounts at Union CCPs should be foreseen.

Or. en

## Amendment 7

### Proposal for a regulation Recital 12

#### *Text proposed by the Commission*

(12) To ensure that clients are aware of their options and can take an informed decision as where to clear their derivative contracts, clearing members and clients that provide clearing services in both Union and recognised third-country CCPs should inform their clients about the option to clear a derivative contract in a Union CCP ***so that clearing in those services identified as of substantial systemic importance is reduced in Tier 2 CCPs in order to ensure the financial stability of the Union.***

#### *Amendment*

(12) To ensure that clients are aware of their options and can take an informed decision as where to clear their derivative contracts, clearing members and clients that provide clearing services in both Union and recognised third-country CCPs should inform their clients about the option to clear a derivative contract in a Union CCP, ***and should clearly disclose the costs associated with clearing services in the different CCPs where it is possible to clear those contracts. Such obligation to inform should be distinct from the active account requirement.***

Or. en

#### *Justification*

*The scope of the Art 7b(1) is broader than the scope of the active account requirement, as it requires relevant clearing members and clients to systematically propose Union clearing alternatives even for services that are not determined as being of substantial systemic importance by ESMA. The purpose of the proposed Article 7b(1) of EMIR is to provide incentives to end clients, subject or not to the active account requirement, to clear at EU central counterparties (CCPs).*

## Amendment 8

### Proposal for a regulation Recital 13



*Text proposed by the Commission*

(13) To ensure that **competent authorities have** the necessary information on the clearing activities undertaken by clearing members or clients in recognised 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 traded on a regulated market and over-the-counter (OTC) derivatives transactions.

*Amendment*

(13) To ensure that **ESMA has** the necessary information on the clearing activities undertaken by clearing members or clients in recognised 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 traded on a regulated market and over-the-counter (OTC) derivatives transactions. **ESMA should, in close cooperation with the ESCB, specify the content and the format of the exact 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 or clients is minimised.**

Or. en

## **Amendment 9**

### **Proposal for a regulation Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

**(13a) Under the current framework, ESMA receives transaction data under EMIR and SFTR, which provides an EU-wide view on markets, but not on CCPs' risk management. This lack of data creates substantial issues for ESMA, which requires timely and reliable information on CCPs activities and practices to fulfill its financial stability mandate. It seems therefore necessary that a formal reporting requirement regarding CCP risk management data by EU CCPs to ESMA is introduced. This would help further strengthen the standardisation and comparability across**

*data, and ensure it is delivered on time, while covering similar data as the reports prepared by EU CCPs and shared with the college on a monthly basis, and therefore not be additional burden for CCPs. In addition to the possibility for ESMA to request data directly from CCPs, clearing members and clients in market turmoil, the data received in the monthly (voluntary) data reports via the college should be formalised to ensure higher standardisation, comparability and timely delivery.*

Or. en

## Amendment 10

### Proposal for a regulation Recital 14

#### *Text proposed by the Commission*

(14) Regulation (EU) 2019/834 of the European Parliament and of the Council<sup>34</sup> amended Regulation (EU) No 648/2012 to introduce, inter alia, an exemption from reporting requirements for OTC derivative transactions between counterparties within a group, where at least one of the counterparties is a non-financial counterparty. That exemption has been introduced because intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. As such, those transactions do not significantly contribute to systemic risk and interconnectedness with the rest of the financial system. The exemption for those transactions from reporting requirements has, however, limited the ability of ESMA, the ESRB and other authorities to clearly identify and assess the risks taken by non-financial counterparties. ***To ensure more visibility on intragroup transactions,***

#### *Amendment*

(14) Regulation (EU) 2019/834 of the European Parliament and of the Council<sup>34</sup> amended Regulation (EU) No 648/2012 to introduce, inter alia, an exemption from reporting requirements for OTC derivative transactions between counterparties within a group, where at least one of the counterparties is a non-financial counterparty. That exemption has been introduced because intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. As such, those transactions do not significantly contribute to systemic risk and interconnectedness with the rest of the financial system. The exemption for those transactions from reporting requirements has, however, limited the ability of ESMA, the ESRB and other authorities to clearly identify and assess the risks taken by non-financial counterparties. Considering their potential interconnectedness with the rest



considering their potential interconnectedness with the rest of the financial system and taking into account recent market developments, in particular strains on energy markets as a result of Russia's unprovoked and unjustified aggression against Ukraine, *that* exemption should be *removed*.

of the financial system and taking into account recent market developments, in particular strains on energy markets as a result of Russia's unprovoked and unjustified aggression against Ukraine, *more visibility on intragroup transactions might be warranted. However, the impact of the reintroduction of the clearing obligation on commercial activities of non-financial counterparties is unclear. It is also unclear whether direct reporting from non-financial counterparties would significantly improve the effectiveness of supervisors, given that the exemption only applies to intragroup transactions and not to external ones, which are fully reported to trade repositories as required by Regulation (EU) No 648/2012, specifying for each derivative contract if such contract is directly related to its commercial activity, treasury financing or for trading purpose. Since during the energy crisis the transparency problems were concentrated in the futures markets, rather than in the OTC derivative markets within the meaning of Regulation (EU) No 648/2012. That Regulation already foresees a strict framework to grant the exemption, as competent authorities only grant an intragroup reporting exemption to companies that can demonstrate adequate internal risk management policy. Removing this exemption could disproportionately burden corporate end-users of financial markets, which often use intragroup transactions for hedging purposes as part of prudential risk management, as noted by the ESRB in its letter of 20 March 2023<sup>34a</sup>. In light of these considerations, ESMA should be mandated to submit a report to the Commission, together with a cost-benefit analysis, assessing the possibility of removing the exemption.*

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<sup>34</sup> Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU)

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<sup>34</sup> Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU)

No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).

No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).

34a

[https://www.esrb.europa.eu/pub/pdf/other/esrb.letter230320\\_on\\_emir\\_review\\_mep~058e272ec7.en.pdf](https://www.esrb.europa.eu/pub/pdf/other/esrb.letter230320_on_emir_review_mep~058e272ec7.en.pdf)

Or. en

## Amendment 11

### Proposal for a regulation Recital 18 a (new)

*Text proposed by the Commission*

*Amendment*

***(18a) In order to avoid market fragmentation and ensure a level playing field, acknowledging the fact that in some 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 those products should be phased-in. This phase-in period would provide time for ESMA to monitor regulatory developments in other jurisdictions and for the Commission to ensure that appropriate requirements are in place in the Union to mitigate counterparty credit risk in respect of such contracts whilst avoiding scope for regulatory arbitrage.***

Or. en

## Amendment 12

### Proposal for a regulation Recital 19

#### *Text proposed by the Commission*

(19) To ensure a consistent and convergent approach amongst competent authorities throughout the Union, authorised CCPs or legal persons that wish to be authorised under Article 14 of 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, as set out in Article 1(2) of that Regulation. 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 complies with all requirements of Regulation (EU) No 648/2012 for all services it offers.

#### *Amendment*

(19) To ensure a consistent and convergent approach amongst competent authorities throughout the Union, authorised CCPs or legal persons that wish to be authorised under Article 14 of 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, as set out in Article 1(2) of that Regulation. When a CCP clears non-financial instruments, in addition to financial instruments, *ESMA* should be able to ensure that the CCP complies with all requirements of Regulation (EU) No 648/2012 for all services it offers.

Or. en

## Amendment 13

### Proposal for a regulation Recital 20

#### *Text proposed by the Commission*

(20) Union CCPs face challenges in expanding their product offer and experience difficulties in bringing new products to the market. Those challenges and difficulties can be explained by certain provisions of Regulation (EU) No 648/2012 that render some authorisation procedures too long, complex and uncertain in their outcome. The process of authorising Union CCPs or extending their

#### *Amendment*

(20) Union CCPs face challenges in expanding their product offer and experience difficulties in bringing new products to the market. Those challenges and difficulties can be explained by certain provisions of Regulation (EU) No 648/2012 that render some authorisation procedures too long, complex and uncertain in their outcome. The process of authorising Union CCPs or extending their

authorisation should therefore be simplified, while ensuring the appropriate involvement of ESMA and the college referred to in Article 18 of Regulation (EU) No 648/2012. First, to avoid significant, and potentially indefinite, delays when *competent authorities assess* the completeness of an application for an authorisation, *the competent authority* should swiftly acknowledge receipt of that application and quickly verify whether the CCP has provided the documents required for the assessment. To ensure that Union CCPs submit all required documents with their applications, ESMA should develop draft regulatory and implementing technical standards specifying which documents should be provided, what information those documents should contain and in which format they should be submitted. Second, to ensure an efficient and concurrent assessment of applications, CCPs should be able to submit all documents via a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Third, a CCP's competent authority, ESMA and the college should, during the assessment period, engage and ask the CCP any questions 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.

authorisation should therefore be simplified, while ensuring the appropriate involvement of ESMA and the college referred to in Article 18 of Regulation (EU) No 648/2012. First, to avoid significant, and potentially indefinite, delays when *ESMA assesses* the completeness of an application for an authorisation, *ESMA* should swiftly acknowledge receipt of that application and quickly verify whether the CCP has provided the documents required for the assessment. To ensure that Union CCPs submit all required documents with their applications, ESMA should develop draft regulatory and implementing technical standards specifying which documents should be provided, what information those documents should contain and in which format they should be submitted. Second, to ensure an efficient and concurrent assessment of applications, CCPs should be able to submit all documents via a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Third, a CCP's competent authority, ESMA and the college should, during the assessment period, engage and ask the CCP any questions 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.

Or. en

## **Amendment 14**

### **Proposal for a regulation Recital 21**

(21) There is currently 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 does not increase the risks for the CCP. It is therefore necessary to lay down that applications in those cases should not undergo the full assessment procedure. For that reason, it should be specified which additional clearing services and activities are non-material, and thus do not increase the risks for a Union CCP, and should be approved through a non-objection procedure by *that CCP's competent authority*. That non-objection procedure should be applied where the CCP intends to clear *one or more financial instruments belonging to the same classes of financial instruments for which it has been authorised to clear, provided such financial instruments are traded on a trading venue for which the CCP already provides clearing services or performs activities and the proposed additional clearing service or activity does not involve a payment in a new currency. That non-objection procedure should also be applied where the CCP adds a new Union currency in a class of financial instruments already covered by the CCP's authorisation, or where the CCP adds one or more additional tenors to a class of financial instruments already covered by the CCP's authorisation provided that the maturity range is not significantly extended*. In addition, a CCP should also be able to ask its competent authority for the non-objection procedure to apply where that CCP considers that the proposed additional service or activity would not increase its risks, in particular where the new clearing service or activity is similar to the services the CCP is already authorised to provide. The non-objection

(21) There is currently 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 does not increase the risks for the CCP. It is therefore necessary to lay down that applications in those cases should not undergo the full assessment procedure. For that reason, it should be specified which additional clearing services and activities are non-material, and thus do not increase the risks for a Union CCP, and should be approved through a non-objection procedure by *ESMA*. That non-objection procedure should be applied where the CCP intends to clear a new currency in a class of financial instruments already covered by the CCP's authorisation *for which the CCP does not have in place the relevant payment facility, intends to offer a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, central securities depository (CSD) or payment system or intends to offer contracts that cannot be liquidated in the same manner or together with contracts already cleared by the CCP*. In addition, a CCP should also be able to ask its competent authority for the non-objection procedure to apply where that CCP considers that the proposed additional service or activity would not increase its risks, in particular where the new clearing service or activity is similar to the services the CCP is already authorised to provide. The non-objection procedure should not require a separate opinion from ESMA and the college since such requirement would be disproportionate. *There are also a number of changes that a CCP adopts on a regular basis ('business as usual') and that might not qualify as material or non-material. For those changes, it seems*

procedure should not require a separate opinion from ESMA and the college since such requirement would be disproportionate. *Instead, ESMA and the college should be able to provide input to the CCP's competent authority through the joint supervisory team established for that CCP.*

*reasonable that CCPs should not be subject to the procedures to extend the authorisations, but they should rather be checked only during the annual review. This measure should significantly alleviate the burden on competent authorities, and greatly reduce the capacity of CCPs to implement changes that will not modify their overall risk profile. Nonetheless, ESMA should regularly review how the changes in the authorisation and assessment procedures are implemented in practice, to ensure that they do not increase the financial stability risk for the Union.*

Or. en

## Amendment 15

### Proposal for a regulation Recital 22

#### *Text proposed by the Commission*

(22) To foster a cooperative supervision of CCPs on an ongoing basis, the college should issue an opinion where **a competent authority** considers withdrawing a CCP's authorisation and when a competent authority conducts the annual review and evaluation of that CCP.

#### *Amendment*

(22) To foster a cooperative supervision of CCPs on an ongoing basis, the college should issue an opinion where **ESMA** considers withdrawing a CCP's authorisation and when a competent authority conducts the annual review and evaluation of that CCP.

Or. en

## Amendment 16

### Proposal for a regulation Recital 24

#### *Text proposed by the Commission*

(24) **ESMA should be able to contribute more effectively to ensuring that Union CCPs are safe, robust and competitive in**

#### *Amendment*

(24) **The clearing landscape in the Union has undergone major changes since 2019, when amending regulations to**



*providing their services throughout the Union. Therefore, ESMA should, in addition to the supervisory competences currently laid down in Regulation (EU) No 648/2012, also issue an opinion to the CCP's competent authority about a CCP's annual review and evaluation, the withdrawal of its authorisation and margin requirements. When issuing an opinion, ESMA should assess a CCP's compliance with the applicable requirements, focusing in particular on identified cross-border risks or risks to the financial stability of the Union. It is also necessary to further enhance supervisory convergence and to ensure that all stakeholders are informed of ESMA's and the college's assessment of a CCP's activities. ESMA should therefore disclose, taking into account the need to protect confidential information, the fact that a competent authority does not comply or does not intend to comply with its opinion or the opinion of the college and any conditions or recommendations included therein. ESMA should be able to decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with the ESMA opinion or the college opinion or any conditions or recommendations contained therein.*

*Regulation (EU) No 1095/2010 and Regulation (EU) No 648/2012 were adopted, and a more coordinated and integrated approach to the supervision of EU CCPs appears necessary, especially as more systemic activity is expected to shift towards the Union due to the requirement to hold active accounts at EU CCPs for services of substantial systemic importance. ESMA should therefore be the direct supervisor of EU CCPs, and enhanced cooperation and integration between all relevant authorities is necessary to ensure that risks concentrated in EU CCPs are adequately monitored and managed, in order to minimise systemic risk and spill-over effects across Member States. Empowering ESMA with a direct supervisory role vis-a-vis EU CCPs requires adapting the existing supervisory framework under Regulation (EU) No 648/2012, providing ESMA with decision-making powers over EU CCPs, but also by clarifying how these new powers would interact with the supervisory role of the national competent authorities. Under a new and more integrated approach, relevant supervisory decisions should be drafted and adopted by ESMA, having taken into account the opinion of the college. The competent authority of the CCP may be requested by ESMA to assist with drafting decisions, the verification of activities of the CCP, and the day-to-day assessments. ESMA should be empowered to delegate specific supervisory tasks to competent authorities. ESMA should be in charge of coordinating the joint supervisory activities, including in relation to on-site inspections of EU CCPs. The change in the approach should also cover the annual reviews.*

Or. en

## Amendment 17

### Proposal for a regulation Recital 25

#### *Text proposed by the Commission*

(25) It is necessary to ensure that the CCP complies with Regulation (EU) No 648/2012 on an ongoing basis, including after a non-objection procedure approving the provision of additional clearing services or activities, or after a non-objection procedure for the validation of a model change in which cases ESMA and the college do not issue a separate opinion. The review conducted **by the competent authority of the CCP** at least on an annual basis should therefore in particular consider such new clearing services or activities and any model changes. To ensure supervisory convergence and that Union CCPs are safe, robust and competitive in providing their services throughout the Union, the report of **the competent authority** should be subject to an opinion by **ESMA and** the college and should be submitted every year.

#### *Amendment*

(25) It is necessary to ensure that the CCP complies with Regulation (EU) No 648/2012 on an ongoing basis, including after a non-objection procedure approving the provision of additional clearing services or activities, or after a non-objection procedure for the validation of a model change in which cases ESMA and the college do not issue a separate opinion. The review conducted by **ESMA** at least on an annual basis should therefore in particular consider such new clearing services or activities and any model changes. To ensure supervisory convergence and that Union CCPs are safe, robust and competitive in providing their services throughout the Union, the report of **by ESMA** should be subject to an opinion by the college and should be submitted every year.

Or. en

## Amendment 18

### Proposal for a regulation Recital 26

#### *Text proposed by the Commission*

(26) ESMA should have the means to identify potential risks to the Union's financial stability. ESMA should therefore, in cooperation with the EBA, EIOPA, 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 Council Regulation

#### *Amendment*

(26) ESMA should have the means to identify potential risks to the Union's financial stability. ESMA should therefore, in cooperation with the **ESRB**, EBA, EIOPA, 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 Council



(EU) No 1024/2013<sup>36</sup>, identify the interconnections and interdependencies between different CCPs and legal persons, including 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.

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<sup>36</sup> [...]

Regulation (EU) No 1024/2013<sup>36</sup>, identify the interconnections and interdependencies between different CCPs and legal persons, including, *as far as 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.

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<sup>36</sup> [...]

Or. en

### *Justification*

*As the ESRB is responsible for macroprudential issues, ESMA should seek the ESRB advice when assessing potential risks to the EU financial stability. Also, the addition of 'as far as possible' is to reflect the fact that there are no direct contractual links between CCPs and indirect clients.*

## **Amendment 19**

### **Proposal for a regulation**

#### **Recital 28**

##### *Text proposed by the Commission*

(28) It is necessary to ensure a prompt exchange of information, knowledge sharing and effective cooperation between the authorities involved in the supervision of authorised CCPs, and in particular where a swift decision by *a CCP's competent authority* is required. It is therefore appropriate to *set up a* joint supervisory *team* for each Union CCP to assist those supervisory authorities, including by providing input to *the CCP's competent authority* within the context of the non-objection procedure for extending a CCP's existing authorisation, assisting in establishing the frequency and depth of a CCP's review and evaluation, and

##### *Amendment*

(28) It is necessary to ensure a prompt exchange of information, knowledge sharing and effective cooperation between the authorities involved in the supervision of authorised CCPs *and in the monitoring of risks to the financial stability of the Union*, and in particular where a swift decision by *ESMA* is required. It is therefore appropriate to *create a framework for* joint supervisory *activities* for each Union CCP to assist those supervisory authorities, including by providing input to *ESMA* within the context of the non-objection procedure for extending a CCP's existing authorisation, assisting in establishing the frequency and

participating *to* on-site inspections.  
***Considering that a CCP's competent authority remains ultimately responsible for the final supervisory decisions, the joint supervisory teams should work under the auspices of the CCP's competent authority for which the team is established and should be composed of staff members from the CCP's competent authority, ESMA and certain members of the college. Other members of the college should also be able to request to participate justifying the request based on their assessment of the impact that the CCP's financial distress could have on the financial stability of their respective Member State.***

depth of a CCP's review and evaluation, and participating *in* on-site inspections.

Or. en

## Amendment 20

### Proposal for a regulation

#### Recital 31

##### *Text proposed by the Commission*

(31) 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 aggression against Ukraine showed that, while it is essential for competent authorities to cooperate and exchange information to address ensuing risks when events with cross-border impacts emerge, ESMA still lacks the necessary tools to ensure such coordination and a convergent approach at Union level. ESMA should therefore 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 ask, by simple request,

##### *Amendment*

(31) 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 aggression against Ukraine showed that, while it is essential for competent authorities to cooperate and exchange information to address ensuing risks when events with cross-border impacts emerge, ESMA still lacks the necessary tools to ensure such coordination and a convergent approach at Union level. ESMA should therefore 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 ask, by simple request,

information from market participants which is necessary for ESMA to perform its coordination function in those situations and to be able to issue recommendations to the competent authority.

information from market participants which is necessary for ESMA to perform its coordination function in those situations and to be able to issue recommendations to the competent authority. ***Finally, given that developments in financial markets could have direct implications for the banking system or for monetary policy decisions, representatives of relevant central banks of issue should always be invited to participate in the coordination meetings of the CCP Supervisory Committee in response to such emergencies.***

Or. en

## Amendment 21

### Proposal for a regulation Recital 38

*Text proposed by the Commission*

(38) To mitigate potential risks for the financial stability of the Union, or of one or more of its Member States, CCPs and clearing houses should not be allowed to be clearing members of other CCPs nor should CCPs be able to accept to have other CCPs as clearing members or indirect clearing members.

*Amendment*

(38) To mitigate potential risks for the financial stability of the Union, or of one or more of its Member States, CCPs and clearing houses should not be allowed to be clearing members of other CCPs nor should CCPs be able to accept to have other CCPs as clearing members or indirect clearing members. ***This exclusion should not affect interoperability arrangements, or other arrangements such as cross-margining and sponsored-memberships or sponsored access, between CCPs.***

Or. en

## Amendment 22

### Proposal for a regulation Recital 40

*Text proposed by the Commission*

(40) To ensure 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 closer relationship with CCPs 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 CCP 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 may ask. A better understanding of CCP margin models can improve clients' ability to reasonably predict margin calls and prepare themselves for collateral requests, particularly in stress events.

*Amendment*

(40) To ensure 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 closer relationship with CCPs 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 CCP 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 may ask. A better understanding of CCP 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 effectively provide the required levels of transparency on margin calls and CCP margin models to their clients, CCPs should also provide them with any information they require. ESMA, in consultation with EBA and the ESCB, should better specify the scope and the format of the exchange of information between CCPs and clearing members and between clearing members and their clients.***

Or. en

**Amendment 23**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 2 – introductory part**

Regulation (EU) No 648/2012

Article 4 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

(2) *Article 4 is amended as follows:*

Or. en

## **Amendment 24**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 2 – point b (new)**

Regulation (EU) No 648/2012

Article 4 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**(b) *the following paragraph is inserted:***

**2a. *Without prejudice to risk-mitigation techniques under Article 11, OTC derivative contracts that are formed and established by, and are a part and the result of, post-trade risk reduction (PTTR) transactions as referred to in Article 4aa, shall not be subject to the clearing obligation where that is the agreement of the parties to the transaction.***

Or. en

*Justification*

*See Recital 9a.*

## **Amendment 25**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 3 – introductory part**

Regulation (EU) No 648/2012

Article 4a – paragraph 3

*Text proposed by the Commission*

*Amendment*

(3) *in Article 4a(3), the first*

(3) *Article 4a is amended as follows:*

*subparagraph is replaced by the following:*

Or. en

## Amendment 26

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 3 – point a (new)

Regulation (EU) No 648/2012

Article 4a – paragraph 1

#### *Present text*

1. Every 12 months, a financial counterparty taking positions in OTC derivative contracts may calculate its aggregate month-end average **position** for the previous 12 months in accordance with paragraph 3.

Where a financial counterparty does not calculate its positions, or where the result of **that** calculation exceeds any of the clearing thresholds specified pursuant to point (b) **of** Article 10(4), the financial counterparty shall:

- (a) immediately notify ESMA and the relevant competent authority thereof, **and, where relevant, indicate the period used for the calculation;**
- (b) establish clearing arrangements within four months after the notification referred to in point (a) of this subparagraph; and
- (c) become subject to the clearing obligation referred to in Article 4 for all

#### *Amendment*

**a) *the first paragraph is replaced by the following:***

"1. Every 12 months, a financial counterparty taking positions in OTC derivative contracts may calculate its aggregate month-end average **positions in uncleared contracts** for the previous 12 months in accordance with paragraph 3.

Where a financial counterparty does not calculate its positions, or where the result of **the calculation of its aggregate month-end average position in uncleared contracts for the previous 12 months** exceeds any of the clearing thresholds specified pursuant to **Article 10(4)**, point (b), **or when the result of the calculation of its aggregate month-end average position in OTC contracts for the previous 12 months exceeds the activity threshold specified pursuant to Article 10(4), point (b)**, the financial counterparty shall:

- (a) immediately notify ESMA and the relevant competent authority thereof;
- (b) establish clearing arrangements within four months after the notification referred to in point (a) of this subparagraph; and
- (c) 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 (a) of this subparagraph.

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 (a) of this subparagraph.

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

### *Justification*

*Tackling some technical issues with regard to the new methodology for calculating the thresholds. The amendments aim at ensuring that the clearing obligation keeps a prudent coverage under the new calculation methodology.*

## **Amendment 27**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 3 – point b (new)**

Regulation (EU) No 648/2012

Article 4a – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 28**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 3**

Regulation (EU) No 648/2012

Article 4a – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

In calculating the positions referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under

In calculating the ***aggregate month-end average*** positions ***in uncleared contracts*** referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts that are not cleared in a

Article 25, entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.;

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.;

Or. en

*Justification*

*No substantive change - alignment with language used in EMIR.*

**Amendment 29**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 3 a (new)**

Regulation (EU) No 648/2012

Article 4a a (new)

*Text proposed by the Commission*

*Amendment*

**(3a) The following article is inserted:**

**Article 4aa**

***Exemption from clearing obligation for post-trade risk reduction services***

**1. A PTTR transaction shall only be exempted from the clearing obligation under Article 4 where the PTRR service provider and each participant to the PTRR transaction comply with the requirements of this Article.**

**2. A PTRR exercise shall meet all of the following conditions:**

**(a) be performed by a PRTT service provider independent of the market participants;**

**(b) be a market risk neutral exercise that does not contribute to price formation and might take the form of a compression, rebalancing or optimisation;**

**(c) be executed on a bilateral or multilateral basis and contain cleared and uncleared portfolios;**



*(d) reduce or mitigate risks or exposures in each of the portfolios submitted under it;*

*(e) where appropriate, include the possibility of concluding an offsetting transaction facing a CCP;*

*(f) where it includes a cleared portfolio, clear any PTRR transaction that reduces risk or exposure in such portfolio;*

*(g) be either accepted or rejected in its entirety, with the result that the participants to the PTRR exercise are not able to choose which trades to execute under that exercise.*

*3. A PTRR service provider shall provide PTRR services under pre-agreed rules, using methods and algorithms in pre-scheduled cycles, and in a reasonable, transparent and non-discriminatory manner. Only entities initially submitting a portfolio to the PTRR exercise shall be allowed to participate in that exercise and, after submitting the portfolio to the PTRR exercise, the entities shall have no influence over the result of the exercise.*

*In order to prevent a build-up of transactions in portfolios, the PTRR service provider shall conduct portfolio compression after every PTRR exercise that results in a material number of new transactions.*

*The PTRR service provider shall keep records of all transactions executed pursuant to a PTRR exercise, including information on transactions entered into within the exercise, on transactions resulting from the exercise either as amended transactions or as new transactions, on the overall change in the risk of the different portfolios included in the exercise, and on whether any transactions were entered into with a CCP.*

*The PTRR service provider shall 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 deliberate circumvention of the clearing obligation.*

**4. Before entities begin to participate in a PTRR exercise and make use of the clearing exemption for a PTRR transaction, they shall notify their respective competent authorities thereof and provide them with a written explanation on how they comply with the conditions set out in this Article.**

**5. The use of a PTRR exercise and the use of the clearing exemption for the relevant PTRR transactions shall be deemed validated unless the notified competent authority informs the entity that it does not validate the use of the exemption, within 30 calendar days from the date of the notification. Where an entity no longer complies with the requirements set out in this Article the competent authority may withdraw its validation for the exemption for new PTRR transactions. Competent authorities shall notify ESMA of any entity that has been validated by the authority to participate in a PTRR exercises.**

**A PTRR service provider offering services under this Article shall be authorised in accordance with Directive 2014/65/EU. The competent authority which has authorised the PTRR service provider shall notify ESMA about the authorisation.**

**6. ESMA shall, on an annual basis confirm that a registered PTRR service provider complies with the requirements set out in this Article, and shall maintain a list of PTRR service providers. The list shall be made available to the public and updated regularly.**

**7. ESMA shall develop draft regulatory technical standards to further specify the conditions for the use of the exemption from the clearing obligation**

*under this Article, including aspects such as:*

*(a) market neutrality in the PTRR exercise,*

*(b) requirements for the management of the PTRR exercise;*

*(c) requirements for assessing the possibility of entering into off-setting trades with a CCP;*

*(d) the manner in which applications for exemption from the clearing obligation are to be monitored.*

*ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after entry force of this amending Regulation].*

*Power is delegated to the Commission to adopt 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.*

Or. en

*Justification*

*See Recital 9a.*

**Amendment 30**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 1

*Text proposed by the Commission*

1. Financial counterparties or **a** non-financial counterparties that are subject to the clearing obligation in accordance with Articles 4a and 10 and clear any of the categories of the derivative contracts referred to in paragraph 2 shall clear at least **a proportion** of such contracts at

*Amendment*

1. Financial counterparties or non-financial counterparties that are subject to the clearing obligation in accordance with Articles 4a and 10 and clear any of the categories of the derivative contracts referred to in paragraph 2 shall clear at least **proportions** of such contracts at

accounts at CCPs authorised under Article 14.

*active* accounts at CCPs authorised under Article 14.

*The clearing obligation referred to in the first subparagraph shall remain for as long as the derivative contracts referred to in paragraph 2 are being cleared.*

Or. en

*Justification*

*Clarification that there may be different proportions for different classes of derivatives and that the requirement applies throughout the duration of the contract.*

**Amendment 31**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 1a (new)

*Text proposed by the Commission*

*Amendment*

**1a. For the purposes of paragraph 1 of this Article, an account at a CCP authorised under Article 14 shall be deemed active where it complies with the following conditions:**

**(a) it satisfies initial margin and daily margin requirements against existing positions;**

**(b) new positions are entered into on a regular basis on the same account.**

Or. en

*Justification*

*Proposal to have at least regular (to be defined) trading and clearing activity on the account for it to be deemed active during qualitative approach. See explanatory statement for more details.*

## Amendment 32

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 4

Regulation (EU) No 648/2012

Article 7a – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***1b. ESMA shall develop draft regulatory technical standards to specify how often new positions are to be entered into the same account in order for that account to be considered 'active' for the purposes of paragraph 1a.***

***ESMA shall submit those draft regulatory technical standards to the Commission by ... [6 months after the date of entry into force of this amending Regulation].***

***Power is delegated to the Commission to adopt 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.***

Or. en

### *Justification*

*ESMA should be empowered to specify how frequently different counterparties should trade in order for that account to be considered active. Flexibility will be required, given that there are counterparties that clear new transactions multiple times a day, and others that only clear once a week or less. ESMA may even consider whether a minimum threshold can apply (i.e. counterparties that clear less than once a month may not be subject to the requirement).*

## Amendment 33

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 4

Regulation (EU) No 648/2012

Article 7a – paragraph 1 c (new)

*Text proposed by the Commission*

*Amendment*

***1c. The obligation laid down in paragraph 1 shall apply to derivative***

***contracts entered into on or after... [the date of entry into force of this Regulation].***

Or. en

*Justification*

*Clarification that the active account requirement applies only to new trades.*

**Amendment 34**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 1 d (new)

*Text proposed by the Commission*

*Amendment*

***1d. Financial counterparties or non-financial counterparties belonging to the same group shall be subject to the obligation set out in paragraph 1, if any entity in the group clears any of the categories of derivative contracts referred to in paragraph 2.***

Or. en

*Justification*

*Clarification that the requirement covers the whole group.*

**Amendment 35**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The categories of derivative contracts ***subject to the obligation*** referred to in paragraph 1 ***shall be any of the***

2. The ***obligation laid down in paragraph 1 of this Article shall apply to any of the following:***

*following:*

- (a) interest rate derivatives denominated in euro and Polish zloty;
- (b) *Credit Default Swaps (CDS)* denominated in euro;
- (c) *Short-Term Interest Rate Derivatives (STIR)* denominated in euro.

- (a) *OTC interest rate derivatives denominated in euro and Polish zloty;*
- (b) *short-term interest rate derivatives (STIR) denominated in euro;*
- (c) *other categories of derivative contracts pertaining to clearing services identified by ESMA as being of substantial systemic importance in accordance with Article 25(2c).*

*Where ESMA undertakes an assessment pursuant to Article 25(2c), as referred to in point (c) of the first subparagraph, and concludes that certain services or activities provided by Tier 2 CCPs that were previously identified by ESMA as being of substantial systemic importance for the Union or one or more of its Member States no longer are, the Commission is empowered to adopt a delegated act to amend paragraph 2 accordingly, in accordance with Article 82.*

Or. en

#### *Justification*

*Proposal to take into account market developments by removing the CDS contracts from the list of categories of derivatives subject to the active account requirement and increase flexibility by cross-referencing to future assessments conducted by ESMA under Article 25(2c). In addition, proposal to introduce a requirement to regularly review the assessment under Article 25(2c).*

#### **Amendment 36**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 3

*Text proposed by the Commission*

3. A financial counterparty or a non-financial counterparty that is subject to the

*Amendment*

3. A financial counterparty or a non-financial counterparty that is subject to the

obligation **set out** in paragraph 1 shall calculate its activities in the categories of derivative contracts referred to in paragraph **1** at CCPs authorised under Article 14.

obligation **laid down** in paragraph 1 **of this Article**, shall calculate its activities in the categories of derivative contracts referred to in paragraph **2** at CCPs authorised under Article 14 **and, separately, at CCPs recognised under Article 25 to ensure their compliance with the obligations set out in those paragraphs.**

***The financial counterparty or non-financial counterparty shall include in that calculation all derivative contracts referred to in paragraph 2 of this Article entered into by that counterparty or by other entities within the group to which that counterparty belongs.***

Or. en

#### *Justification*

*Proposal to include TC-CCPs in the denominator in view of calculating the proportion of clearing activity at EU CCPs out of total clearing activity, as per paragraph 5. The calculations should be carried out at group level, including EU subsidiaries, to calculate their level of activity to ensure compliance with the 'proportion of activity'. In addition, the reporting should encompass, separately, information on transactions cleared at authorised CCPs and at recognised third-country CCPs. Such enlarged reporting will allow competent authorities to capture cases of non-compliance with the active account requirement.*

#### **Amendment 37**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 4

##### *Text proposed by the Commission*

4. ***A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall report to the competent authority of the CCP or CCPs it uses the outcome of the calculation referred to in paragraph 2 on an annual basis, confirming their compliance with the obligation set out in that paragraph. The CCP's competent authority shall immediately transmit that***

##### *Amendment*

4. ***ESMA shall calculate and monitor the level of activity in the derivative contracts referred to in paragraph 2 of this Article, and shall transmit that information to the Joint Monitoring Mechanism referred to in Article 23c.***



information to **ESMA and** the Joint Monitoring Mechanism referred to in Article 23c.

Or. en

### *Justification*

*Instead of creating another reporting line, proposal for ESMA to calculate the level of activity at entity level and in aggregate based on the reporting already collected under EMIR and the proposed reviewed Article 9, which now includes reporting data from EU subsidiaries (see below). This addition to Article 9 is important to ensure that ESMA has a complete view.*

## **Amendment 38**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. By ... [18 months from the date of entry into force of this amending Regulation] ESMA shall, in cooperation with the Joint Monitoring Mechanism established under Article 23c, submit a report to the Commission assessing the following:**

**(a) the number of accounts opened at CCPs authorised under Article 14 as a result of the obligation set out in paragraph 1;**

**(b) the amount of activity financial and non-financial counterparties maintain in the active accounts referred to in paragraph 1, relative to their overall clearing activity in the contracts referred to in paragraph 2;**

**(c) the frequency with which new trades are cleared through active accounts by the different types of counterparties;**

**(d) an assessment of the effectiveness of the active accounts in mitigating the risks for the Union or for one or more of**

*its Member States posed by substantially systemic Tier 2 CCPs or their clearing services.*

*Where ESMA concludes that the requirement referred to in paragraph 1 has not led, or is not likely to lead, to sufficient mitigation of the financial stability risks for the Union or for one or more of its Member States, it shall, in cooperation with EBA, EIOPA and the ESRB and after consulting the ESCB, develop draft regulatory technical standards specifying the following:*

*(a) the proportion of activity in each category of the derivative contracts referred to in paragraph 2 that financial and non-financial counterparties shall clear through their active accounts;*

*(b) the methodology for calculation under paragraph 3, ensuring that the calculation:*

*(i) includes the categories of derivative contracts referred to in paragraph 2 entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs;*

*(ii) does not lead to the double counting of the positions of clearing members and clients;*

*(c) provides for different phase-in periods for the progressive implementation of the requirement to hold a proportion of activity in the derivative contracts referred to in paragraph 2.*

*For the purpose of point (a) of the second subparagraph, where appropriate, different proportions may be set for different sub-types of derivative contracts, for different types of counterparty, and for different types of activity.*

*Those set proportions shall not include outstanding contracts and shall be set at a level that results in a reduction in clearing in those derivative contracts at those Tier*

*2 CCPs offering services of substantial systemic importance for the financial stability of the Union or one or more of its Member States pursuant to Article 25(2c) and contributes to reducing the substantial systemic importance of clearing in such derivative contracts.*

*When developing the technical standards referred to in the second subparagraph, ESMA shall take into account all of the following:*

- (a) the different sub-categories of each category of the derivative contracts referred to in paragraph 2;*
- (b) the different types of financial counterparties and non-financial counterparties and their respective characteristics;*
- (c) the potential costs or risks of requiring a proportion of activity on different types of financial counterparties or non-financial counterparties, including the outcome of the cost benefit analysis as required under Article 10 of Regulation (EU) 1095/2010;*
- (d) the potential impact that the level of activity may have on the competitiveness of financial counterparties and non-financial counterparties;*
- (e) the potential risk that costs related to the allocation of a proportion of activity are passed on to clients;*
- (f) market developments which may require a new assessment pursuant to Article 25(2c);*
- (h) the impact on financial stability.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 12 months after the submission of the report referred to in paragraph 4 of this Article.*

*Power is delegated to the Commission to adopt the regulatory technical standards*

*referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

Or. en

*Justification*

*Proposal to have an ESMA Report 18 months after the entry into force of EMIR 3 to assess whether the situation has improved with the qualitative active account requirement and whether a quantitative thresholds should be introduced to address the situation, and outlining the process for it. See explanatory note for greater details.*

**Amendment 39**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. ESMA shall, in cooperation with the EBA, EIOPA and ESRB and after consulting the ESCB, develop draft regulatory technical standards specifying:**

**deleted**

**(a) the proportion of activity in each category of the derivative contracts referred to in paragraph 2; that proportion shall be set at a level that results in a reduction in clearing in those derivative contracts at those Tier 2 CCPs offering services of substantial systemic importance for the financial stability of the Union or one or more of its Member States pursuant to Article 25(2c) and that ensures clearing in such derivative contracts is no longer of substantial systemic importance;**

**(b) the methodology for calculation under paragraph 3.**

**ESMA shall submit those draft regulatory technical standards to the Commission by ... [PO: please insert the date = 12 months after the date of entry into force**

*of this Regulation].*

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

Or. en

#### **Amendment 40**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7a – paragraph 6

*Text proposed by the Commission*

*Amendment*

6. *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 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 one or more of its Member States no longer are, the Commission is empowered to adopt a delegated act to amend paragraph 2 accordingly, in accordance with Article 82.*

6. *ESMA shall monitor the implementation of the obligation set out in paragraph 1 and report on an annual basis to the European Parliament, the Council and the Commission.*

Or. en

##### *Justification*

*Remove Commission Delegated Act, given cross-reference to ESMA assessment under Article 25(2c). Replaced with proposal to increase feedback and accountability by ESMA, in addition to the annual report by JMM under Article 23c(3).*

## Amendment 41

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 4

Regulation (EU) No 648/2012

Article 7b – paragraph 1

#### *Text proposed by the Commission*

1. Clearing members and clients that are established in the Union or are part of a group subject to consolidated supervision in the Union and that clear in a CCP recognised under Article 25, shall report to **their competent authority** the scope of their clearing activity **in such CCP** on an annual basis, specifying all of the following:

#### *Amendment*

1. Clearing members and clients that are established in the Union or are part of a group subject to consolidated supervision in the Union and that clear in a CCP recognised under Article 25, shall report to **ESMA** the scope of their clearing activity on an annual basis, specifying all of the following:

Or. en

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 42

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 4

Regulation (EU) No 648/2012

Article 7b – paragraph 1 – subparagraph 1 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***The clearing members and clients referred to in the first subparagraph shall also disclose, in a clear and understandable manner, the costs associated with clearing services of the different CCPs at which it is possible to clear the contract.***

Or. en

*Justification*

*Proposal to strengthen cost considerations for clients.*

**Amendment 43**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7b – paragraph 2 – subparagraph 1 – point b

*Text proposed by the Commission*

(b) the *average* values cleared over 1 year per *Union* currency and per asset class;

*Amendment*

(b) the values *and volumes* cleared *and the margin posted* over 1 year per currency and per asset class;

Or. en

**Amendment 44**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7b – paragraph 2 – subparagraph 1 – point e a (new)

*Text proposed by the Commission*

*Amendment*

*(ea) the amount of total liquid financial resources committed to the CCP.*

Or. en

**Amendment 45**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7b – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

*That competent authority shall promptly transmit that information to ESMA and the*

*ESMA shall transmit that information to the Joint Monitoring Mechanism referred*

Joint Monitoring Mechanism referred to in Article 23c. to in Article 23c.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 46**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7b – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

ESMA shall, ***in cooperation with the EBA, EIOPA and ESRB and*** after consulting the ESCB, develop draft regulatory technical standards further specifying the content of the information to be reported ***and the level of detail of the information to be provided*** in accordance with paragraph 2, taking into account which information is already available to ESMA under the existing reporting framework.

*Amendment*

ESMA shall, after consulting ***the ESRB and*** the ESCB, develop draft regulatory technical standards further specifying the content of the information to be reported in accordance with paragraph 2 ***of this Article***, taking into account which information is already available to ESMA under the existing reporting framework, ***including under Article 9.***

Or. en

*Justification*

*Proposal to simplify the consultation process and to standardise and align as much as possible the new reporting requirements with existing ones, to avoid duplications and unnecessary costs.*

**Amendment 47**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 4**

Regulation (EU) No 648/2012

Article 7b – paragraph 4 – subparagraph 1 and 1 a (new)



*Text proposed by the Commission*

ESMA shall develop draft implementing technical standards specifying the **format of** the information to be **submitted to the competent authority referred to in paragraph 2**.

*Amendment*

**To ensure the uniform application of paragraph 2 of this Article**, ESMA shall develop draft implementing technical standards, **in close cooperation with the ESCB**, specifying the **data standards and formats for** the information to be **reported**.

**In developing those draft implementing technical standards, ESMA shall take into account international developments and standards agreed at international or Union level, and their consistency with the reporting requirements laid down in Article 9.**

Or. en

*Justification*

*See above.*

## **Amendment 48**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 4 a (new)**

Regulation (EU) No 648/2012

Article 7 c (new)

*Text proposed by the Commission*

*Amendment*

**(4a) the following article is inserted:**

#### **Article 7c**

#### **Information on CCPs established in the Union**

**1. CCPs authorised under Article 14 shall report on a monthly basis to ESMA 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, capital, including dedicated own resources used in**

*the waterfall or referred to in Article 45(4) of this Regulation and in Article 9(14) of Regulation (EU) 2021/23;*

*(c) 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;*

*(d) the adequacy of the margin and default fund contributions and waterfall resources;*

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

*(f) 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.*

*ESMA shall promptly provide the information referred to in the first subparagraph of this paragraph to the college of the CCP referred to in Article 18.*

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

*ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after the date of entry into force of this amending Regulation].*

*Power is delegated to the Commission to adopt 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. To ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical*

*standards specifying the data standards and formats for the information to be reported.*

*ESMA shall submit those draft implementing technical standards to the Commission by ... [12 months after 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.;*

Or. en

### *Justification*

*Proposal to include a formal reporting requirement regarding CCP risk management data by EU CCPs to ESMA. This would cover similar data as the reports prepared by EU CCPs and shared with the college on a monthly basis and therefore not be additional burden for CCPs. However, it would help further strengthen the standardisation and comparability across data, and ensure it is delivered on time (as of today, the college sometimes receives the reports months later). The addition is necessary, as today ESMA receives transaction data under EMIR and SFTR which provides an EU-wide view on markets (OI/notional, volumes, margin collected), but not on CCPs' risk management, creating substantial issues for ESMA to fulfil its financial stability mandate. In addition to the possibility for ESMA to request data directly from CCPs, CMs and clients in market turmoil (Article 24(5) of EMIR 3), the data received in the monthly (voluntary) data reports via the college should be formalised to ensure higher standardisation, comparability and timely delivery.*

## **Amendment 49**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 5 – point -a (new)**

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 1

#### *Present text*

Counterparties and CCPs shall ensure that the details of any derivative contract they

#### *Amendment*

*(-a) in paragraph 1, the first subparagraph is replaced by the following:*

*"Counterparties, including those established outside the Union and*

have concluded and of any modification or termination of the contract are reported in accordance with paragraphs 1a to 1f of this Article to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.

***belonging to a group subject to consolidated supervision in the Union,*** and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraphs 1a to 1f of this Article to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract."

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

#### *Justification*

*Seeking to capture offshore activity for the purpose of the article.*

### **Amendment 50**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 5 – point a**

Regulation (EU) No 648/2012

Article 9 – paragraph 1 – subparagraph 3 and 4

*Text proposed by the Commission*

*Amendment*

***(a) in paragraph 1, the third and fourth subparagraphs are deleted;*** ***deleted***

Or. en

#### *Justification*

*The removal of the exemption from the reporting obligations for intragroup transactions may be premature, and it should be better assessed following a cost-benefit analysis or a proper impact assessment, given that it was only recently introduced and that it seems unclear whether the added benefits from a supervisory perspective would justify the costs for NFCs.*

## Amendment 51

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 5 – point b a (new)

Regulation (EU) No 648/2012

Article 9 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

**(ba) the following paragraph is added:**

**"6a. By ... [12 months after the entry into force of this amending Regulation] ESMA shall submit a report to the Commission on the possibility of removing the requirements laid down in paragraph 1, third and fourth subparagraph. The report shall be accompanied by a cost benefit analysis."**

Or. en

*Justification*

*See justification to AM 53.*

## Amendment 52

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 6 – introductory part

Regulation (EU) No 648/2012

Article 10

*Text proposed by the Commission*

*Amendment*

**(6) in Article 10, paragraphs 2a to 5 are replaced by the following:**

**(6) Article 10 is amended as follows:**

Or. en

## Amendment 53

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 6 – point a (new)

Regulation (EU) No 648/2012

Article 10 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**a) in Article 10(1), the following subparagraph is added:**

**"In order to comply with the notification requirement referred to in point (a) of the second subparagraph, the non-financial counterparty shall use the same notification form, including all the relevant information for all the subsidiaries of the group established in the Union, to notify the different national competent authorities of the Member States where those subsidiaries are established and ESMA."**

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0648-20220812>)*

*Justification*

*Centralisation of the notification to facilitate access by NCAs to relevant information for the group to which the NFCs belong. This should facilitate supervision of NFCs at EU level.*

## **Amendment 54**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 6 – point b (new)**

Regulation (EU) No 648/2012

Article 10 – paragraphs 2a to 5

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 55**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 6**

*Text proposed by the Commission*

2a. 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 the group level.

*Amendment*

2a. The relevant competent authorities of the non-financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure:

(a) the effective calculation of the positions **at the group level; and**

(b) **the effective evaluation and assessment of** the level of exposure in OTC derivative contracts at the group level.

Or. en

*Justification*

*Changes to clarify that the calculations/assessment applies at group level. Doing the calculation at individual NFCs would not capture the risk posed by groups, would encourage subsidiaries of big groups which centralise trading for other sister companies to move away from the EU if the clearing thresholds were to be set at a level which would allow to capture them, and would impede capturing the positions taken by subsidiaries of the group outside the EU.*

**Amendment 56**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 6**

Regulation (EU) No 648/2012

Article 10 – paragraph 3

*Text proposed by the Commission*

3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25 entered into by

*Amendment*

3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts that are not cleared in 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.

the non-financial counterparty **or by other non-financial entities within the group to which the non-financial counterparty belongs** 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 that group**.

Or. en

#### *Justification*

*Reinstating current wording on Article 10(3), as COM proposal may lead to the impossibility for corporate treasurers to centralise their risk management function. Removing the reference to the 'group' level, may lead to a situation whereby every group entity has to hedge their risks for themselves, contradicting the advantages of centralised risk management for no clear benefit.*

#### **Amendment 57**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 6**

Regulation (EU) No 648/2012

Article 10 – paragraph 4 – subparagraph 1 – point b

#### *Text proposed by the Commission*

(b) values of the clearing thresholds, which are determined taking into account the systemic relevance of the **open** positions and **future net** exposures per counterparty **and per class of** OTC derivatives;

#### *Amendment*

(b) values of the clearing thresholds **for uncleared derivatives**, which are determined taking into account the systemic relevance of the **sum of net** positions and exposures per counterparty. **ESMA shall also assess whether an aggregate activity threshold, taking into account the overall aggregate position in OTC derivatives of a financial counterparty, is necessary to ensure a prudent coverage of financial counterparties under the clearing obligation and set a level for such a threshold.**

Or. en



## *Justification*

*Technical adjustment which would be needed for the clearing thresholds, in light of the new calculation methodology.*

### **Amendment 58**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 7 – point b**

Regulation (EU) No 648/2012

Article 11 – paragraph 3 – subparagraph 2 and 3

*Text proposed by the Commission*

*Amendment*

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

*A non-financial counterparty becoming subject for the first time to the obligations laid out in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following 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.*

*EBA may issue guidelines or recommendations with a view to ensure a uniform application of the risk-management procedures referred to in the first subparagraph, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.*

*EBA shall develop drafts of those guidelines or recommendations in cooperation with the ESAs.;*

Or. en

### **Amendment 59**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 7 – point b a (new)**

*Present text*

3. Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012. Non-financial counterparties referred to in Article 10 shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts **that are entered into on or after** the clearing threshold **is** exceeded.

*Amendment*

**(b a) in Article 11, paragraph 3 is replaced by the following:**

"3. Financial counterparties shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts that are entered into on or after 16 August 2012. Non-financial counterparties referred to in Article 10 shall have risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts **in the asset class or asset classes for which** the clearing threshold **has been** exceeded.

***Financial and non-financial counterparties shall notify EBA and their competent authorities about the models used for initial margin calculation at least 60 working days prior to their usage. EBA and the counterparty's competent authorities may object to the use of a specific initial margin model by the counterparty if the model does not meet the conditions laid down in the regulatory technical standards referred to in paragraph 15, point (a). Where EBA or the national competent authorities object, the counterparty is entitled to continue using the initial margin model up to one year following receipt of the objection. Where counterparties cease using such models, they shall notify EBA and their competent authorities by the end of the quarter in which they ceased using the model.***

***Financial counterparties shall report information on the risk-management procedures referred in the first subparagraph, including, where relevant, in relation to initial margin models used, to EBA and their competent authorities***

*and shall disclose key information on these risk-management procedures.*

*A non-financial counterparty becoming subject for the first time to the obligations laid out in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following 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.*

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)*

#### *Justification*

*Information on initial margin models is not available within the existing regulatory framework in a form appropriate for prudential purposes. The AM intends to clarify supervisory requirements for counterparties in connection with initial margin models, and to introduce greater proportionality and more flexibility. It also grants competent authorities the power to take action in order to ensure that these models are sufficiently robust. The requirements under this article should be defined via RTS, rather than guidelines, in order to ensure convergence (see following AMs). Lastly, the current wording should be amended to align the asset class approach taken for clearing obligation to the exchange of collateral on a bilateral basis.*

## **Amendment 60**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 7 – point b b (new)**

Regulation (EU) No 648/2012

Article 11 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

*(b b) in Article 11, the following paragraph 3a is inserted:*

*3a. Notwithstanding paragraph 3, single-stock options and equity index options not cleared by a CCP shall be temporarily exempted from risk-management procedures that require the*

*timely, accurate and appropriately segregated exchange of collateral.*

*ESMA shall monitor regulatory developments in other jurisdictions and shall, at least every two years, submit a report thereon to the Commission. After submission of the report by ESMA, the Commission shall assess whether international developments have led to more convergence in the treatment of single-stock options and equity index options and whether the temporary exemption of such options is still justified. The Commission may adopt a delegated act specifying that, after the expiry of an adaptation period, the exemption is to be removed. The adaptation period shall not exceed two years, and may only be extended once, by an additional period of six months, where the reasons for granting an adaptation period still exist.*

*The Commission is empowered to adopt the delegated act referred to in the second subparagraph of this paragraph in accordance with Article 82.*

Or. en

#### *Justification*

*The amendments provides an exemption from the variation and initial margin requirements for single-stock options and equity index options, given that in some jurisdictions those margin requirements are not being enforced, creating an unlevel playing field for EU market players. In light of this, the treatment of those products should be phased-in, to allow ESMA to monitor regulatory developments in other jurisdictions and for the Commission to ensure that appropriate requirements are in place in the Union.*

#### **Amendment 61**

##### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 7 – point c**

Regulation (EU) No 648/2012

Article 11– paragraph 15 – subparagraph 1– point aa

*Text proposed by the Commission*

*Amendment*

(c) in paragraph 15, first subparagraph, point (aa) is **deleted**.

(c) in paragraph 15, first subparagraph, point (aa) is **replaced by the following:**

**"(aa) the supervisory requirements for counterparties in connection with initial margin models additional to those specified in point (a);"**

Or. en

*Justification*

*Art. 11(15aa) includes an obligation for EBA to develop draft RTS specifying the supervisory procedures to ensure initial and ongoing validation of risk-management procedures for OTC derivative contracts not cleared by a CCP. It is unclear why this obligation is deleted, albeit the COM seems to suggest that guidelines should replace the RTS. However, the replacement of RTS with guidelines would reduce the legal certainty for market participants, and create a discrepancy between the chosen legal instrument (RTS vs guidelines) for validation of risk management procedures for the cleared and the bilateral world. For explanation of changes to the wording of this point, see justification to AM of Article 11 paragraph 3.*

**Amendment 62**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 7 – point c a (new)**

Regulation (EU) No 648/2012

Article 11 – paragraph 15 – subparagraph 1 – point ab (new)

*Text proposed by the Commission*

*Amendment*

**(c a) in paragraph 15, first subparagraph, point (ab) is inserted:**

**"(ab) the data standards, formats and type of information to be reported and disclosed on risk-management procedures, including where relevant on initial margin models, in accordance with the supervisory requirements referred to in point (aa);"**

Or. en

*Justification*

*See justification to AM of Article 11(3).*

**Amendment 63**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 7 a (new)**

Regulation (EU) No 648/2012

Article 11 a (new)

*Text proposed by the Commission*

*Amendment*

**(7a) the following article is inserted:**

**Article 11a**

***Post-trade Risk Reduction Services***

- 1. Without prejudice to risk-mitigation techniques under Article 11, Article 4(1) shall not apply to OTC derivative contracts that are formed and established as the result of a post-trade risk reduction services ('PTRR transactions') exercise where agreed so elected by both parties to the transaction.***
- 2. PTRR transactions may only be exempted from the clearing obligation pursuant to the first subparagraph where the PTRR service provider and each participant to the PTRR comply with the requirements set out under paragraph 2 and 3 of this Article, respectively.***
- 3. A PTRR exercise shall:***
  - a) be performed by an entity independent of the counterparties to the OTC derivative contracts included in the exercise;***
  - b) be market risk neutral;***
  - c) not contribute to price formation;***
  - d) take the form of a compression, rebalancing or optimisation;***
  - e) be executed on a bilateral or multilateral basis and only contain portfolios of OTC derivatives not cleared***

*in a CCP;*

- f) achieve a reduction in the counterparty credit risk in each of the portfolios submitted to the exercise;*
- g) be accepted or rejected in full and, as a result, the participants to the exercise shall not be able to choose which trades to execute under the exercise;*
- h) Be open for participation only to the entities initially submitting a portfolio to the exercise.*

*4. A PTRR service provider shall:*

- a) be authorised in accordance with Directive 2014/65/EU;*
- b) carry out PTRR exercises under pre-agreed rules, methods and algorithms in pre-scheduled cycles and in a reasonable, transparent and non-discriminatory manner;*
- c) ensure that entities participating in a PTRR exercise have no influence over the result of the exercise;*
- d) in order to prevent a build-up of transactions in portfolios, undertake a compression exercise after each PTRR exercise resulting in new transactions;*
- e) keep records of the transactions executed pursuant to a PTRR exercise, including information on transaction entered into the exercise, transactions resulting from the exercise either as modified transactions or as new transactions, and the overall change in the risk of the different portfolios included in the exercise;*
- f) monitor the transactions resulting from the PTRR exercise to ensure, to the extent possible, the PTRR exercise do not result in any misuse or intended circumvention of the clearing obligation.*

*The competent authority which has authorised the PTRR service provider shall notify ESMA about the*

*authorisation.*

*5. Before entities start using the clearing exemption for PTRR transactions referred to in paragraph 1, they shall notify their respective competent authorities, providing them with a written explanation of how the conditions set out in this Article are and will be complied with.*

*6. The use of the clearing exemption for the relevant PTRR transactions shall be deemed approved unless the notified competent authority informs the entity it supervises that it does not validate the use of the exemption, within 30 calendar days of the date of the receipt of the notification. Where a PTRR service provider no longer complies with the requirements set out in this Article, the competent authority may withdraw its validation for the exemption for new PTRR transactions. Competent authorities shall notify ESMA of any entity having been validated to participate in PTRR exercises or having its validation withdrawn by the authority.*

*7. The competent authority that has authorised a PTRR service provider shall, on a yearly basis, confirm that that provider complies with the requirements set out in this Article. The competent authority shall also communicate the list of the entities offering PTRR services it authorised, and any updates thereto, to ESMA, which shall publish that list.*

*8. ESMA shall develop draft regulatory technical standards to further specify the conditions set out in paragraphs 2 and 3, including aspects such as market neutrality in the PTRR exercise, requirements of the management of the PTRR exercise and how to monitor the correct application of the exemption granted, ensuring the clearing obligation is not circumvented. ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after*



*entry force of this amending Regulation].*

*Power is delegated to the Commission to adopt 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.*

Or. en

*Justification*

*See justification to AM of Article 11(3).*

**Amendment 64**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 8**

Regulation (EU) No 648/2012

Article 13

*Text proposed by the Commission*

(8) Article 13 is *deleted*;

*Amendment*

(8) Article 13 is *replaced by the following*:

*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 this Regulation under Article 11;*

*(b) ensure protection of professional secrecy that is equivalent to that set out in this Regulation; and*

*(c) are being effectively applied and enforced in an equitable and nondistortive*

*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).*

*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 established in, or subject to the equivalent requirements of, that third country.*

Or. en

#### *Justification*

*Proposing to keep the equivalence approach with respect to bilateral margins, which has proven to be of some utility for the market participants.*

#### **Amendment 65**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 9 – point -a (new)**

Regulation (EU) No 648/2012

Article 14 – paragraph 1

#### *Present text*

Where a legal person established in the Union intends to provide clearing services as a CCP, it shall apply for authorisation to the competent authority of the Member State where it is established (*the CCP's competent authority*), *in accordance with the procedure set out in Article 17.*

#### *Amendment*

*(-a) paragraph 1 is replaced by the following:*

"Where a legal person established in the Union intends to provide clearing services as a CCP, it shall apply for authorisation to **ESMA, in accordance with the procedure set out in Article 17.**

**ESMA shall inform** the competent authority of the Member State where it is

established *without delay*.

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

*Justification*

*ESMA should be responsible for the approval of new CCPs, to strengthen supervisory convergence.*

**Amendment 66**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 9 – point a a (new)**

Regulation (EU) No 648/2012

Article 14 – paragraph 4

*Present text*

*Amendment*

4. A CCP shall comply at all times with the conditions necessary for authorisation.

A CCP shall, without undue delay, notify the competent authority of any material changes affecting the conditions for authorisation.

**(aa) paragraph 4 is replaced by the following:**

"4. A CCP shall comply at all times with the conditions necessary for authorisation.

A CCP shall, without undue delay, notify **ESMA and** the competent authority of any material changes affecting the conditions for authorisation."

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

*Justification*

*Both ESMA and the NCA should be notified of material changes affecting the conditions for authorisation.*

**Amendment 67**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 10 – point a**

Regulation (EU) No 648/2012

Article 15 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

A CCP wishing to extend its business to additional services or activities not covered by the existing authorisation shall submit a request for extension to **the CCP's competent authority**. The offering of clearing services or activities for which the CCP has not already been authorised shall be considered to be an extension of that authorisation.

*Amendment*

A CCP wishing to extend its business to additional services or activities not covered by the existing authorisation, **or a CCP that has not, during the last 12 months, provided clearing services or activities in a class of financial instrument or a class of non-financial instrument covered by the existing authorisation and that wishes to offer such instrument for clearing**, shall submit a request for extension to **ESMA**. The offering of clearing services or activities for which the CCP has not already been authorised, **or for which it has been authorised but which it has not provided during the last 12 months**, shall be considered to be an extension of that authorisation.

Or. en

*Justification*

*ESMA should be responsible to carry out validation for Article 15 on extension of services. The changes also seek to avoid a situation where authorisations are given without being used, as required under Article 20.*

**Amendment 68**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 10 – point b**

Regulation (EU) No 648/2012

Article 15 – paragraph 3 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***When preparing the draft regulatory technical standards, ESMA shall take into account the existing documentation requirements and practices under this Regulation and streamline their submission where possible, and the importance of avoiding an excessive time to market and of ensuring that the information to be provided by the CCP***

***applying for an extension of authorisation pursuant to paragraph 1 is proportional to the materiality of the change for which the CCP is applying.***

Or. en

*Justification*

*Specification to ensure that when drafting RTS ESMA take into account the degree of materiality of the change that the CCP is applying for, as well as the necessary time to market, in order to avoid an excessively long list of documents to be provided by the CCP. For a similar reason, ESMA should also take into account the existing documentation requirements for CCPs and seek to streamline their submission to avoid an excessive administrative burden on CCPs.*

**Amendment 69**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 11 – point b**

Regulation (EU) No 648/2012

Article 17 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

***The CCP's competent authority*** shall, within 2 working days after such application has been received, acknowledge receipt of the application, stating to the CCP whether it contains the documents required pursuant to Article 14(6) and (7) or, where the CCP has applied for an extension of its authorisation, pursuant to Article 15(3) and (4).

*Amendment*

***ESMA*** shall, within 2 working days after such application has been received, acknowledge receipt of the application, stating to the CCP whether it contains the documents required pursuant to Article 14(6) and (7) or, where the CCP has applied for an extension of its authorisation, pursuant to Article 15(3) and (4).

Or. en

**Amendment 70**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 11 – point b**

Regulation (EU) No 648/2012

Article 17 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

Where **the CCP's competent authority** determines that not all documents required pursuant to Article 14(6) and (7) or Article 15(3) and (4) have been submitted, it shall reject the CCP's application.

Where **ESMA** determines that not all documents required pursuant to Article 14(6) and (7) or Article 15(3) and (4) have been submitted, it shall reject the CCP's application.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 71**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 11 – point b**

Regulation (EU) No 648/2012

Article 17 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The applicant CCP shall provide all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation.

2. The applicant CCP shall provide **ESMA with** all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the **applicable** requirements laid down in this Regulation **as regards the changes referred to in the application for authorisation submitted by the applicant CCP.**

Or. en

*Justification*

*Clarification that the Article only applies to the specific application for authorisation. The current drafting might be interpreted as implying that each time a CCP applies for a license extension under Art. 15(1), a full review of the CCP's compliance with all EMIR Articles applicable to CCPs, including those that are not relevant for the approval procedure, and this might further complicate the approval process.*

## Amendment 72

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 11 – point b

Regulation (EU) No 648/2012

Article 17 – paragraph 3 – subparagraph 1 – introductory part

*Text proposed by the Commission*

Within 40 working days of the end of the period set out in the second subparagraph of paragraph 1 (“the risk assessment period”), **the CCP’s competent authority**, ESMA and the college shall each conduct risk assessments of the CCP’s compliance with the relevant requirements laid down in this Regulation. By the end of the risk assessment period:

**(a) the CCP’s competent authority shall transmit its draft decision and report to ESMA and the college;**

**(b) ESMA shall adopt an opinion in accordance with Article 24a(7) and transmit it to the CCP’s competent authority and the college;**

**(c) the college shall adopt an opinion pursuant to Article 19 and transmit it to the CCP’s competent authority and ESMA.**

*Amendment*

Within 40 working days of the end of the period set out in the second subparagraph of paragraph 1 (“the risk assessment period”), ESMA and the college shall each conduct risk assessments of the CCP’s compliance with the relevant requirements laid down in this Regulation. By the end of the risk assessment period **ESMA shall transmit its draft decision and report to the CCP’s competent authority and the college.**

Or. en

## Amendment 73

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 11 – point b

Regulation (EU) No 648/2012

Article 17 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

**For the purposes of point (b), ESMA may include in its opinion any conditions or recommendations it considers necessary**

*Amendment*

**deleted**

*to mitigate any shortcomings in the CCP's risk management, in particular in relation to identified cross-border risks or risks to the financial stability of the Union.*

Or. en

#### **Amendment 74**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 11 – point c**

Regulation (EU) No 648/2012

Article 17 – paragraph 3a

*Text proposed by the Commission*

3a. During the risk assessment period referred to in paragraph 3, **the CCP's competent authority**, ESMA or any of the college members may submit questions directly to the CCP. Where the CCP does not respond to such questions within the time period set by the requesting **authority**, **the CCP's competent** authority, ESMA or the college may take a decision in the absence of the CCP's response or may decide to extend the assessment period by a maximum of 10 working days, if, in their view, the question is material for the assessment.

*Amendment*

3a. During the risk assessment period referred to in paragraph 3, ESMA or any of the college members may submit questions directly to the CCP. Where the CCP does not respond to such questions within the time period set by the requesting authority, ESMA or the college may take a decision in the absence of the CCP's response or may decide to extend the assessment period by a maximum of 10 working days, if, in their view, the question is material for the assessment. **A CCP shall not be required to respond more than once to a specific question.**

Or. en

*Justification*

*Reflecting the wording already included in recital 20, according to which any question asked to the CCPs during the assessment period shall be shared between the relevant authorities.*

#### **Amendment 75**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 11 – point c**

Regulation (EU) No 648/2012

Article 17 – paragraph 3b – subparagraph 1



*Text proposed by the Commission*

Within 10 working days of receipt of **both the ESMA opinion and** the college opinion, **the CCP's competent authority** shall adopt its decision and transmit it to **ESMA** and the college.

*Amendment*

Within 10 working days of receipt of the college opinion, **ESMA** shall adopt its decision and transmit it to **the CCP's competent authority** and the college.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 76**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 11 – point c**

Regulation (EU) No 648/2012

Article 17 – paragraph 3b – subparagraph 2

*Text proposed by the Commission*

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

*Amendment*

Where **ESMA** does not agree with an opinion of the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 77**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 11 – point c**

Regulation (EU) No 648/2012  
Article 17 – paragraph 3b – subparagraph 3

*Text proposed by the Commission*

ESMA shall publish the ***fact that a competent authority does not comply or does not intend to comply with its opinion or the opinion of the college or with any conditions or recommendations included therein. ESMA may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with the ESMA opinion or the college opinion or any conditions or recommendations contained therein.***;

*Amendment*

ESMA shall, ***where necessary***, publish the ***reasons for its non-compliance or for its intention not to comply with the opinion of the college or with any conditions or recommendations included therein.***

Or. en

## **Amendment 78**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 11 – point d**

Regulation (EU) No 648/2012

Article 17 – paragraph 4 – subparagraph 1 – introductory part

*Text proposed by the Commission*

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

*Amendment*

***ESMA*** shall, after duly considering the ***opinion of*** the college referred to in paragraph 3, including any conditions or recommendations contained therein, grant authorisation as referred to in Articles 14 and Article 15(1), second subparagraph, point (a), only where it is fully satisfied that the applicant CCP:

Or. en

### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 79

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 11 – point d

Regulation (EU) No 648/2012

Article 17 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

The CCP shall not be authorised where all the members of the college, excluding ***the authorities of the Member State where the CCP is established***, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the CCP not be authorised. That opinion shall state in writing the full and detailed reasons why the college considers that the requirements laid down in this Regulation or other Union law are not met.

*Amendment*

The CCP shall not be authorised where all the members of the college, excluding ***ESMA***, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the CCP not be authorised. That opinion shall state in writing the full and detailed reasons why the college considers that the requirements laid down in this Regulation or other Union law are not met.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 80

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 11 – point d

Regulation (EU) No 648/2012

Article 17 – paragraph 4 – subparagraph 3

*Text proposed by the Commission*

***Where a joint opinion by mutual agreement as referred to in the second subparagraph has not been reached and a majority of two-thirds of the college have expressed a negative opinion, any of the competent authorities concerned, based on that majority of two-thirds of the college, 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***

*Amendment*

***deleted***

*Justification*

*Delete to avoid conflict of interest with ESMA binding mediation.*

**Amendment 81**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 11 – point d**

Regulation (EU) No 648/2012

Article 17 – paragraph 4 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

*The referral decision shall state in writing the full and detailed reasons why the relevant members of the college consider that the requirements laid down in this Regulation or other parts of 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 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 third subparagraph.*

*deleted*

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs (following which this provision is redundant). See explanatory statement for greater details.*

**Amendment 82**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 11 – point d**

Regulation (EU) No 648/2012  
Article 17 – paragraph 4 – subparagraph 5

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs (following which this provision is redundant). See explanatory statement for greater details.*

### **Amendment 83**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 11 – point d**

Regulation (EU) No 648/2012

Article 17 – paragraph 4 – subparagraph 6

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs (following which this provision is redundant). See explanatory statement for greater details.*

## Amendment 84

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 11 – point e

Regulation (EU) No 648/2012

Article 17 – paragraph 7 – subparagraph 2

#### *Text proposed by the Commission*

The registered recipients shall upload promptly all documents they receive from the CCP in relation to an application pursuant to paragraph 1 and the central database shall automatically inform the registered recipients when changes have been made to its content. The central database shall contain all documents provided by an applicant CCP under paragraph 1 and all other documents relevant for the assessment by *the CCP's competent authority*, ESMA and the college.

#### *Amendment*

The registered recipients shall upload promptly all documents they receive from the CCP in relation to an application pursuant to paragraph 1 and the central database shall automatically inform the registered recipients when changes have been made to its content. The central database shall contain all documents provided by an applicant CCP under paragraph 1 and all other documents relevant for the assessment by ESMA and the college.

Or. en

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 85

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 11 – point e

Regulation (EU) No 648/2012

Article 17 – paragraph 7 – subparagraph 3

#### *Text proposed by the Commission*

Members of the CCP Supervisory Committee shall also 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,

#### *Amendment*

Members of the CCP Supervisory Committee shall also 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,

points (c) and (d)(ii), where justified based on confidentiality concerns.;

points (c) and (d)(ii) **and Article 24a(7)** where justified based on confidentiality concerns.;

Or. en

*Justification*

*Clarifying cross-reference to Article 24a(7)*

**Amendment 86**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 12**

Regulation (EU) No 648/2012

Article 17a – paragraph 1

*Text proposed by the Commission*

1. The non-objection procedure shall apply to non-material changes to a CCP's existing authorisation in ***any of the following*** cases where the proposed additional clearing service or activity:

(a) ***fulfils all of the following the conditions:***

***(i) the CCP intends to clear one or more financial instruments belonging to the same classes of financial instruments for which it has been authorised to clear under Articles 14 or 15;***

***(ii) the financial instruments referred to in point (i) are traded on a trading venue for which the CCP already provides clearing services or performs activities; and***

***(iii) the proposed additional clearing service or activity does not involve a payment in a new currency;***

***(b) adds a new Union currency in a class of financial instruments already covered by the CCP's authorisation; or***

*Amendment*

1. The non-objection procedure shall apply to non-material changes to a CCP's existing authorisation in cases where the proposed additional clearing service or activity ***does one or more of the following:***

(a) adds a new currency ***to*** a class of financial instruments already covered by the CCP's authorisation ***for which the CCP does not have in place the relevant payment facility;***

***(b) includes offering a new settlement or delivery mechanism or service which involves establishing links with a different***

*securities settlement system, CSD or payment system that the CCP did not previously use;*

*(c) adds one or more additional tenors to a class of financial instruments already covered by the CCP's authorisation provided that the maturity range is not significantly extended.*

*(c) includes offering contracts that cannot be liquidated in the same manner, such as via direct offer or auction, or together with contracts already cleared by the CCP.*

Or. en

### *Justification*

*See corresponding recital 21.*

## **Amendment 87**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 12**

Regulation (EU) No 648/2012

Article 17a – paragraph 2

#### *Text proposed by the Commission*

**2. The CCP's competent authority may, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, also decide to apply the non-objection procedure of this Article where a CCP so requests and where the proposed additional clearing service or activity does not fulfil any of the following conditions:**

**(a) it results in the CCP needing to adapt significantly its operational structure, at any point in the contract cycle:**

**(b) it includes offering contracts that cannot be liquidated in the same manner, such as via direct offer or auction, or together with contracts already cleared by the CCP;**

**(c) it results in the CCP needing to take into account material new contract specifications, such as significant**

#### *Amendment*

**2. The proposed additional clearing service or activity shall be considered a material change and subject to the procedure set out in Article 17 where it results in the CCP undertaking any of the following:**

**(a) significantly *adapting* its operational structure, at any point in the contract cycle;**

**(b) offering a service or performing an activity relating to a new category of financial instruments or a new type of products or a new type of transactions;**

**(c) offering a service or performing an activity for contracts traded on a trading venue, where the CCP was previously**



*extensions of the ranges of maturities or a new option exercise styles within a category of contracts;*

*(d) it results in the introduction of material new risks, linked to the different characteristics of the assets referenced;*

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

*providing a service or performing an activity for those contracts traded on a bilateral basis only;*

*(d) offering a service or performing an activity for contracts traded on a bilateral basis, where the CCP was previously providing a service or performing an activity for those contracts on a trading venue only;*

*(e) taking into account material new contract specifications, such as a new option exercise styles within a category of contracts;*

*(f) the introduction of materially new risks, linked to the different characteristics of the assets referenced.*

Or. en

*Justification*

*See corresponding recital 21.*

**Amendment 88**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 12**

Regulation (EU) No 648/2012

Article 17a – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

*A CCP that applies for an extension of its authorisation requesting that the non-objection procedure be applied and the proposed additional clearing services or activities fall within the scope of paragraph 1, may start clearing such additional financial instruments or non-financial instruments suitable for clearing before the decision of the CCP's competent authority pursuant to paragraph 4.*

*Amendment*

*deleted*

## Amendment 89

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 17a – paragraph 4

#### *Text proposed by the Commission*

4. Within 10 working days of receipt of an application pursuant to paragraph 2, **the CCP's competent authority** shall, after considering the input of the **joint supervisory team set up for that CCP pursuant to Article 23b**, decide whether the application shall be subject to the non-objection procedure set out in this Article or, if **the CCP's competent authority** has identified material risks as a result of the proposed extension of the CCP's business to additional clearing services or activities, that the procedure set out in Article 17 shall apply. **The CCP's competent authority** shall notify the applicant CCP of its decision. **Where the CCP's competent authority has decided that the procedure set out in Article 17 shall apply, the CCP shall, within 5 working days after receipt of such notification, cease providing such clearing service or activity.**

#### *Amendment*

4. Within 10 working days of receipt of an application pursuant to paragraph 2, **ESMA** shall, after considering the input of the **college**, decide whether the application shall be subject to the non-objection procedure set out in this Article or, if **ESMA** has identified material risks as a result of the proposed extension of the CCP's business to additional clearing services or activities, that the procedure set out in Article 17 shall apply. **ESMA** shall notify the applicant CCP of its decision.

Or. en

#### *Justification*

*The 5 days period is removed as the possibility for CCPs to start providing clearing services prior to the approval is also removed.*

## Amendment 90

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 17a – paragraph 5

*Text proposed by the Commission*

5. Where **a CCP's competent authority**, after considering the input of the **joint supervisory team set up for that CCP pursuant to Article 23b**, has not expressed its objection to the CCP's proposed additional services or activities within 10 working days of receipt of the application where paragraph 1 applies or of receipt of the notification referred to in paragraph 4, where that paragraph applies, confirming that the non-objection procedure set out in this Article applies, the authorisation shall be deemed as granted.

*Amendment*

5. Where **ESMA**, after considering the input of the **college**, has not expressed its objection to the CCP's proposed additional services or activities within 10 working days of receipt of the application where paragraph 1 applies or of receipt of the notification referred to in paragraph 4, where that paragraph applies, confirming that the non-objection procedure set out in this Article applies, the authorisation shall be deemed as granted.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 91**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 12**

Regulation (EU) No 648/2012

Article 17b – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

**A CCP's competent authority** shall submit in electronic format via the central database referred to in Article 17(7) a request for an opinion:

*Amendment*

**When intending to adopt a decision in relation to Article 20, 21, 30, 31, 32, 35, 41, 49, 51 or 54, ESMA** shall submit in electronic format via the central database referred to in Article 17(7) a request for an opinion **by the college pursuant to Article 18.**

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 92

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 17b – paragraph 1 – subparagraph 1 – point a

*Text proposed by the Commission*

*Amendment*

*(a) by ESMA pursuant to Article 23a(2), where the competent authority intends to adopt a decision in relation to Articles 7, 8, 20, 21, 29, 30, 31, 32, 33, 35, 36, 41 and 54;* *deleted*

Or. en

## Amendment 93

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 17b – paragraph 1 – subparagraph 1 – point b

*Text proposed by the Commission*

*Amendment*

*(b) by the college pursuant to Article 18, where the competent authority intends to adopt a decision in relation to Article 20, 21, 30, 31, 32, 35, 41, 49, 51 and 54.* *deleted*

Or. en

## Amendment 94

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 17b – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

*That* request for an opinion shall be shared

*The* request for an opinion *referred to in the first subparagraph, together with all*

immediately with the registered recipients.

*relevant documents*, shall be shared immediately with the registered recipients.

Or. en

## Amendment 95

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 12

Regulation (EU) No 648/2012

Article 17b – paragraph 2 – introductory part

#### *Text proposed by the Commission*

2. Unless otherwise specified under the relevant Article, **ESMA and** the college shall, within 30 working days of receipt of the request referred to in paragraph 1 ('the assessment period'), assess the CCP's compliance with the respective requirements. By the end of the assessment period:

#### *Amendment*

2. Unless otherwise specified under the relevant Article, the college shall, within 30 working days of receipt of the request referred to in paragraph 1 ('the assessment period'), assess the CCP's compliance with the respective requirements. By the end of the assessment period, **ESMA shall transmit its draft decision and report to the CCP's competent authority and the college, and the college shall adopt an opinion pursuant to Article 19 and transmit it to ESMA and the CCP's competent authority. The college may include in its opinion any conditions or recommendations that it considers necessary to mitigate any shortcomings in the CCP's risk management.**

Or. en

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 96

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 12

Regulation (EU) No 648/2012  
Article 17b – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

**(a) the CCP's competent authority shall transmit its draft decision and report to ESMA and the college;** *deleted*

Or. en

#### **Amendment 97**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 12**

Regulation (EU) No 648/2012

Article 17b – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

**(b) ESMA shall adopt an opinion in accordance with Article 24a(7), first subparagraph, point (bc), and transmit it to the CCP's competent authority and the college. ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management, in particular in relation to identified cross-border risks or risks to the financial stability of the Union;** *deleted*

Or. en

#### **Amendment 98**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 12**

Regulation (EU) No 648/2012

Article 17b – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

**(c) the college shall adopt an opinion pursuant to Article 19 and transmit it to** *deleted*

***ESMA and the CCP's competent authority. The college opinion may include conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management.***

Or. en

## **Amendment 99**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 12**

Regulation (EU) No 648/2012

Article 17b – paragraph 3 – subparagraph 1

#### *Text proposed by the Commission*

Within 10 working days of receipt of the ***ESMA opinion and, where required, the college opinion, the CCP's competent authority*** shall, after duly considering the ***opinions of ESMA and the college, including any conditions or recommendations contained therein, adopt its decision and transmit it to ESMA and the college.***

#### *Amendment*

Within 10 working days of receipt of the college opinion, ***ESMA*** shall, after duly considering the ***opinion of the college, including any conditions or recommendations contained therein, adopt its decision and transmit it to the CCP's competent authority and the college.***

Or. en

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## **Amendment 100**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 12**

Regulation (EU) No 648/2012

Article 17b – paragraph 3 – subparagraph 2

#### *Text proposed by the Commission*

Where ***the CCP's competent authority***

#### *Amendment*

Where ***ESMA*** does not agree with ***the***

does not agree with *an* opinion of *ESMA* or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

opinion of the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 101**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 12 a (new)**

Regulation (EU) No 648/2012

Article 17b a (new)

*Text proposed by the Commission*

*Amendment*

***(12 a) the following article is inserted:***

***‘Article 17ba***

***Procedures for implementation by CCPs of 'business as usual' changes***

***1. A change that a CCP intends to adopt shall be directly implemented by the CCP and shall not be subject to the procedures referred to in Articles 17 and 17a where such a change:***

***(a) does not qualify as material under Article 17;***

***(b) does not qualify as non-material pursuant to Article 17a(1); and***

***(c) does not fulfil the conditions under Article 17a(2).***

***2. ESMA shall regularly review the implementation by CCPs of changes that meet the requirements of paragraph 1 and report to the college of each CCP in the Union on their appropriateness.***



*Justification*

*See corresponding Recital 21.*

**Amendment 102****Proposal for a regulation****Article 1 – paragraph 1 – point 13 – point b a (new)**

Regulation (EU) No 648/2012

Article 18 – paragraph 4 – subparagraph 3 (new)

*Text proposed by the Commission*

*Amendment*

***(b a) in paragraph 4, the following subparagraph is added:***

***"For the purpose of adding points to the agenda, the members of the college shall consider the outcome of the work carried out by the Joint Monitoring Mechanism."***

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)*

*Justification*

*Article 18 of EMIR should be amended to include a requirement for the college members to consider the outcome of the work carried out by the JMM when suggesting topics to be included in the agenda of college meetings. This should aid in following up on the work carried out by the JMM within the existing supervisory framework for the EU CCP, to the extent relevant for that specific CCP's activities or risk profile.*

**Amendment 103****Proposal for a regulation****Article 1 – paragraph 1 – point 14 – point a**

Regulation (EU) No 648/2012

Article 19 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***Without prejudice to Article 17(4), third subparagraph, and*** if no joint opinion is reached in accordance with the first

If no joint opinion is reached in accordance with the first subparagraph, the college shall adopt a majority opinion within the

subparagraph, the college shall adopt a majority opinion within the same period.;

same period.;

Or. en

*Justification*

*Alignment with amendments to 17(4).*

**Amendment 104**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 15 – introductory part**

Regulation (EU) No 648/2012

Article 20

*Text proposed by the Commission*

(15) *in* Article 20, *paragraphs 3 to 7 are* replaced by the following:

*Amendment*

(15) Article 20 *is* replaced by the following:

Or. en

**Amendment 105**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 15**

Regulation (EU) No 648/2012

Article 20 – paragraphs 1 and 2

*Present text*

1. Without prejudice to Article 22(3), *the CCP's competent authority* shall withdraw authorisation where the CCP:

(a) has not made use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services or performed no activity for the preceding six months;

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

(c) is no longer in compliance with the

*Amendment*

"1. Without prejudice to Article 22(3), *ESMA* shall withdraw authorisation where the CCP:

(a) has not made use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services or performed no activity for the preceding six months;

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

(c) is no longer in compliance with the

conditions under which authorisation was granted and has not taken the remedial action requested by **the CCP's competent authority** within a set time frame;

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

2. Where **the CCP's competent authority** considers that one of the circumstances referred to in paragraph 1 applies, it shall, within five working days, notify **ESMA** and the members of college accordingly.

conditions under which authorisation was granted and has not taken the remedial action requested by **ESMA** within a set time frame;

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

2. Where **ESMA** considers that one of the circumstances referred to in paragraph 1 applies, it shall, within five working days, notify **the CCP's competent authority** and the members of college accordingly."

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)*

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

### **Amendment 106**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 15**

Regulation (EU) 648/2012

Article 20 – paragraph 3

#### *Text proposed by the Commission*

3. The CCP's competent authority **shall consult ESMA** and the members of the college, in accordance with paragraph 6, on the necessity to withdraw the authorisation of the CCP, except where a decision is required urgently.

#### *Amendment*

3. **ESMA shall consult** the CCP's competent authority and the members of the college, in accordance with paragraph 6, on the necessity to withdraw the authorisation of the CCP, except where a decision is required urgently.

Or. en

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 107

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 15

Regulation (EU) No 648/2012

Article 20 – paragraph 4

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 108

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 15

Regulation (EU) No 648/2012

Article 20 – paragraph 5

*Text proposed by the Commission*

5. **The CCP's competent authority** may limit the withdrawal to a particular service, activity, or class of financial instruments or non-financial instruments.

*Amendment*

5. **ESMA** may limit the withdrawal to a particular service, activity, or class of financial instruments or non-financial instruments.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 109

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 15

Regulation (EU) No 648/2012

Article 20 – paragraph 6

*Text proposed by the Commission*

6. Before **the CCP's competent authority** takes a decision to withdraw a particular service, activity, or class of financial instruments or non-financial instruments, it shall request the **opinions of ESMA and** the college in accordance with Article 17b.

*Amendment*

6. Before **ESMA** takes a decision to withdraw a particular service, activity, or class of financial instruments or non-financial instruments, it shall request the **opinion of** the college in accordance with Article 17b.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 110

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 15

Regulation (EU) No 648/2012

Article 20 – paragraph 7

*Text proposed by the Commission*

7. Where **a CCP's competent authority** takes a decision on the withdrawal of authorisation in full or in relation to a particular service, activity, or class of financial instruments or non-financial instruments, that decision shall take effect throughout the Union.;

*Amendment*

7. Where **ESMA** takes a decision on the withdrawal of authorisation in full or in relation to a particular service, activity, or class of financial instruments or non-financial instruments, that decision shall take effect throughout the Union.;

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 111

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 16 – point a

Regulation (EU) No 648/2012

Article 21 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. *The competent authorities referred to in Article 22* shall do all of the following:

*Amendment*

1. *ESMA* shall do all of the following:

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 112

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 16 – point a

Regulation (EU) No 648/2012

Article 21 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

*(c a) prepare a plan for joint supervisory activities pursuant to Article 23b.*

Or. en

## Amendment 113

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 16 – point b – introductory part

Regulation (EU) No 648/2012

Article 21 – paragraphs 3 to 5

*Text proposed by the Commission*

(b) paragraphs 3 **and 4** are replaced by the following:

*Amendment*

(b) paragraphs 3, **4 and 5** are replaced by the following:

Or. en

## **Amendment 114**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 16 – point b**

Regulation (EU) No 648/2012

Article 21 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

**The competent authorities** shall, after having considered the input of the **joint supervisory team set up for that CCP pursuant to Article 23b**, 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.

*Amendment*

**ESMA** shall, after having considered the input of the **college**, establish the frequency, depth **and substantive focus** 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). **ESMA** shall update the review and evaluation at least on an annual basis.

Or. en

### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 115

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 16 – point b

Regulation (EU) No 648/2012

Article 21 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

CCPs shall be subject to on-site inspections. **Competent authorities** shall invite the **members of the joint supervisory team set up for that CCP pursuant to Article 23b**, to participate in on-site inspections.

*Amendment*

CCPs shall be subject to on-site inspections. **ESMA** shall invite the **college** to participate in on-site inspections.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 116

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 16 – point b

Regulation (EU) No 648/2012

Article 21 – paragraph 3 – subparagraph 3

*Text proposed by the Commission*

**The competent authority** shall forward to the **members of the joint supervisory team set up for that CCP pursuant to Article 23b any** information received from the CCPs during or in relation to on-site inspections.

*Amendment*

**ESMA** shall forward to the **college the** information received from the CCPs during or in relation to on-site inspections.

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*



## Amendment 117

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 16 – point b

Regulation (EU) No 648/2012

Article 21 – paragraph 4

*Text proposed by the Commission*

4. **The competent authorities** shall regularly, and at least annually, submit a report to the college **on** the results of the review and evaluation as referred to in paragraph 1, including whether **the competent authority** has taken any remedial action or imposed penalties. **The competent authorities** shall communicate the report covering a calendar year to **ESMA** by 30 March of the following calendar year. That report shall be subject to an opinion of the college pursuant to Article 19 and **an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc)**, issued in accordance with the procedure set out in Article 17b.;

*Amendment*

4. **ESMA** shall regularly, and at least annually, submit a report to the college **that includes the following:**

**(a)** the results of the review and evaluation as referred to in paragraph 1, including whether **ESMA** has taken any remedial action or imposed penalties; **and**

**(b)** **a plan for joint supervisory activities pursuant to Article 23b for the following calendar year.**

**ESMA** shall communicate the report covering a calendar year to **the CCP's competent authority and the college** by 30 March of the following calendar year. That report shall be subject to an opinion of the college pursuant to Article 19 and issued in accordance with the procedure set out in Article 17b.;

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 118

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 16 – point b

Regulation (EU) No 648/2012

Article 21 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4 a.** *For the purposes of carrying out the review and evaluation referred to in paragraph 1 of this Article, as well as establishing its frequency, depth and substantive focus in accordance with paragraph 3 of this Article, ESMA shall consider the outcome of the work the Joint Monitoring Mechanism has carried out pursuant to Article 23c, to the extent such outcome is relevant for the CCP subject to such review and evaluation.*

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 119

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 16 – point b a (new)

Regulation (EU) No 648/2012

Article 21 – paragraph 5

*Present text*

*Amendment*

**5. The competent authorities** shall require any CCP that does not meet the requirements laid down in this Regulation to take the necessary action or steps at an early stage to address the situation;'

**"5. ESMA** shall require any CCP that does not meet the requirements laid down in this Regulation to take the necessary action or steps at an early stage to address the situation;'

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 120**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 16 a (new)**

Regulation (EU) No 648/2012

Article 22 – paragraph 1 – subparagraph 1

*Present text*

1. Each Member State shall designate the competent authority responsible for carrying out the duties resulting from this Regulation for ***the authorisation and supervision of*** CCPs established in its territory and shall inform the Commission and ESMA thereof.

*Amendment*

***(16 a) in Article 22(1), the first subparagraph is amended as follows:***

"1. Each Member State shall designate the competent authority responsible for carrying out the duties resulting from this Regulation for CCPs established in its territory and shall inform the Commission and ESMA thereof."

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>

*Justification*

*Adjustments in line with new powers conferred to ESMA (see article 22a).*

**Amendment 121**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 16 b (new)**

Regulation (EU) No 648/2012

Article 22 a (new)

*Text proposed by the Commission*

*Amendment*

***(16b) the following article is inserted:***

***‘Article 22a***

### *Powers of ESMA*

***1. ESMA shall be responsible for carrying out its duties under this Regulation for the authorisation and supervision of CCPs established in the Union.***

***2. ESMA shall ensure on an ongoing basis the compliance by CCPs established in the Union with Articles 7 to 8, Articles 14 to 17b, Article 20, 21, and 24 and Titles IV and V.***

***3. ESMA shall be empowered with supervisory, investigatory and enforcement powers necessary for the exercise of its functions under this Regulation.***

***4. The powers referred to in paragraph 3 shall include at least powers to:***

***(a) authorise a CCP or a particular clearing service or activity in financial instruments or non-financial instruments;***

***(b) supervise the CCP's compliance with the requirements laid down in this Regulation and adopt decisions in relation to Articles 7 to 8, 14 to 17b, 20, 21, and 24 and Titles IV and V;***

***(c) have access to any document or other data from the CCP in a form which ESMA considers relevant for the performance of its duties and to receive or take a copy of such documents or data;***

***(d) require or demand the provision of information from any person related to the CCP and if necessary to summon and question a person with a view to obtaining information;***

***(e) carry out joint on-site inspections or investigations with the CCP competent authority;***

***(f) require the auditors of authorised CCPs to provide information;***

***(g) require, the temporary or permanent cessation of any practice or conduct that ESMA considers to be contrary to the provisions of this Regulation or where***

*such practise or conduct may have an adverse effect on the CCPs cross-border activities or a possible cross-border impact;*

*(h) require the removal of a natural person from the management board of an authorised CCP;*

*(i) impose fines and periodic penalty payments;*

*(j) issue public notices; and*

*(k) withdraw the authorisation of the CCP, or its authorisation for a particular service, activity or class of financial instruments or non-financial contract. ’*

Or. en

## **Amendment 122**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 16 c (new)**

Regulation (EU) No 648/2012

Article 22 b (new)

*Text proposed by the Commission*

*Amendment*

*(16c) the following article is inserted:*

*‘Article 22b*

*Delegation of tasks by ESMA to competent authorities*

*1. Where necessary for the proper performance of a supervisory task, ESMA may by decision delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information and to conduct investigations and on-site inspections in accordance with Article 22a of this*

**Regulation.**

**2. Prior to the delegation of a task referred to in paragraph 1, ESMA shall consult the relevant competent authority about all of the following:**

**(a) the scope of the task to be delegated;**

**(b) the timetable for the performance of the task;**

**(c) the transmission of necessary information by and to ESMA.**

**3. ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.**

**4. A delegation of tasks shall not affect the responsibility of ESMA nor limit ESMA's ability to conduct and oversee the delegated activity.'**

Or. en

**Amendment 123**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 17 – point a – introductory part**

Regulation (EU) No 648/2012

Article 23a – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

(a) paragraphs 1 **and 2 are** replaced by the following:

(a) paragraphs 1 **is** replaced by the following:

Or. en

**Amendment 124**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 17 – point a**

Regulation (EU) No 648/2012

Article 23a – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

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

1. ***Without prejudice to Article 22a,*** ESMA shall fulfil a coordination role between competent authorities and across colleges to:

Or. en

*Justification*

*Changes to align proposed articles with introduction of new Article 22a.*

**Amendment 125**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 17 – point a**

Regulation (EU) No 648/2012

Article 23a – paragraph 1 – point e

*Text proposed by the Commission*

*Amendment*

***(e) assess risks when providing opinions to competent authorities pursuant to paragraph 2 on CCPs' compliance with the requirements of this Regulation, in particular 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 those risks.***

***deleted***

Or. en

**Amendment 126**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 17 – point a**

Regulation (EU) No 648/2012

Article 23a – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. *Competent authorities shall submit their draft decisions to ESMA for its***

***deleted***

*opinion before adopting any act or measure pursuant to Articles 7, 8 and 14, Article 15(1), second subparagraph, point (a) and Articles 20 and 21, Articles 29 to 33, and Articles 35, 36, 41, and 54.*

*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).;*

Or. en

#### **Amendment 127**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 17 – point b**

Regulation (EU) No 648/2012

Article 23a – paragraphs 2 to 4

*Text proposed by the Commission*

*Amendment*

(b) paragraphs 3 and 4 are deleted;

(b) paragraphs 2, 3 and 4 are deleted;

Or. en

#### **Amendment 128**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23b – title

*Text proposed by the Commission*

*Amendment*

Joint Supervisory **Teams**

Joint Supervisory **Activities**

*(Please note that throughout the text, reference to the Joint Supervisory Teams should be replaced by reference to Joint Supervisory Activities.)*

Or. en



## Justification

*The creation of Joint Supervisory Teams may have created an additional layers in an already-fragmented supervisory framework. However, their value should be preserved under the framework of joint supervisory activities. Together with an increased role for ESMA and an increased role for the College in the supervision of EU CCPs, the Joint Supervisory Activities will provide great value in the sharing of information and in the common tasks of ESMA the College and other relevant authorities.*

### Amendment 129

#### Proposal for a regulation

##### Article 1 – paragraph 1 – point 18

Regulation (EU) No 648/2012

Article 23b – paragraph 1

#### *Text proposed by the Commission*

1. *A joint supervisory team shall be established for the supervision of each CCP authorised under Article 14. Each joint supervisory team shall be composed of staff members from the CCP's competent authority, ESMA and the members of the college referred to in Article 18, points (c), (g) and (h). Other members of the college may also request to participate in the joint supervisory team. Joint supervisory teams shall work under the coordination of a designated competent authority staff member.*

#### *Amendment*

1. Each CCP authorised under Article 14 **shall be subject to** joint supervisory **activities. These activities** shall be **coordinated by** ESMA and the college **in the context of the annual review and evaluation process, and shall be open for the participation of each** college member **on a voluntary basis.**

Or. en

### Amendment 130

#### Proposal for a regulation

##### Article 1 – paragraph 1 – point 18

Regulation (EU) No 648/2012

Article 23b – paragraph 2 – introductory par

#### *Text proposed by the Commission*

2. *The tasks of a joint supervisory team shall include, but are not limited to,*

#### *Amendment*

2. Joint supervisory **activities** shall include, but are not limited to, all of the

all of the following:

following:

Or. en

### **Amendment 131**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23b – paragraph 2 – point a

*Text proposed by the Commission*

(a) provide input to the competent authorities, ESMA and the colleges pursuant to Article 17a (2), (4) and (5) and Article 21(3);

*Amendment*

(a) provide input to the competent authorities, ESMA and the colleges pursuant to Article 17a (2), (4) and (5) and Article 21(3) **and Article 49(1b)**;

Or. en

### **Amendment 132**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23b – paragraph 2 – point c

*Text proposed by the Commission*

(c) ***liaise with competent authorities and members of the college, where relevant;***

*Amendment*

(c) ***participate in relevant supervisory assessments;***

Or. en

### **Amendment 133**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23b – paragraph 2 – point d

*Text proposed by the Commission*

(d) *where a CCP's competent authority so requests, provide assistance to that competent authority in assessing the CCP's compliance with the requirements of this Regulation.*

*Amendment*

(d) *contribute to the annual review and evaluation process, carried out by ESMA in accordance with Article 21(1).*

Or. en

#### **Amendment 134**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23b – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

*2 a. ESMA may also coordinate, with input from the college, joint supervisory activities in areas not foreseen at the time of the previous annual review, notably in assessing the CCP's compliance with the requirements of this Regulation and assessing any material supervisory concerns that may have arisen since.*

Or. en

#### **Amendment 135**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23b – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. *The CCP's competent authority shall be in charge of the establishment of joint supervisory teams.*

3. *ESMA shall be in charge of establishing and coordinating the joint supervisory activities.*

Or. en

### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

#### **Amendment 136**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23c – paragraph 1 – point ca (new)

*Text proposed by the Commission*

*Amendment*

***(c a) representatives of the central banks of issue of the currencies other than the euro in which the derivative contracts referred to in Article 7a(2) are denominated.***

Or. en

### *Justification*

*One of the JMM main tasks is to monitor the implementation of the requirements set out in the proposed Articles 7a and 7b. These requirements pertain to certain categories of derivative contracts denominated in euro, as well as in Polish zloty. Therefore, the participation of the relevant central banks in their capacity as central banks of issue is warranted.*

#### **Amendment 137**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23c – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

## *Justification*

*To allow the JMM to have a holistic perspective on risks affecting Union central clearing, in addition to liquidity risks, the JMM should also carry out Union-wide assessments of credit and operational risks concerning CCPs, clearing members and clients. Furthermore, the JMM's task in relation to identifying concentration risk should include additional aspects of concentration risks that are relevant for central clearing (below).*

### **Amendment 138**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23c – paragraph 2 – point d

#### *Text proposed by the Commission*

(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;

#### *Amendment*

(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, ***due to clients accessing the same CCP via different clearing members of that CCP, or due to clients maintaining large positions in markets of products that the CCP clears;***

Or. en

## *Justification*

*See above.*

### **Amendment 139**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23c – paragraph 3

#### *Text proposed by the Commission*

3. ESMA shall, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, submit an annual

#### *Amendment*

3. ESMA shall, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, ***and after***

report to the European Parliament, the Council and the Commission on the results of its activities pursuant to paragraph 2.

*consulting relevant national competent authorities, should it deem it necessary, submit an annual report to the European Parliament, the Council and the Commission on the results of its activities pursuant to paragraph 2.*

*Where appropriate, this report shall include recommendations for potential Union-level action to address identified horizontal risks.*

Or. en

## **Amendment 140**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 18**

Regulation (EU) No 648/2012

Article 23c – paragraph 4 – point a

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

#### *Justification*

*Given the changes introduced on Article 7a and in relation to the role of ESMA in the supervisory framework and in the implementation of the AAR, point (a) of this Article should be removed.*

## **Amendment 141**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 19**

Regulation (EU) No 648/2012

Article 24 – paragraph 4 – subparagraph 3 (new)

*Text proposed by the Commission*

*Amendment*

*Where a meeting is held following an*

***emergency situation as specified in paragraph 1, point (c), the Chair shall always invite the relevant central banks of issue to participate to that meeting.***

Or. en

*Justification*

*Developments in financial markets could have direct implications for the performance of the responsibilities of the relevant central banks of issue, which should therefore always be invited to participate in the coordination meetings of the CCP Supervisory Committee in response to such emergencies.*

**Amendment 142**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 20 – point a – introductory part**

Regulation (EU) No 648/2012

Article 24a – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

(a) *paragraph 2 is amended as follows:*

Or. en

**Amendment 143**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 20 – point a – point i (new)**

Regulation (EU) No 648/2012

Article 24a – paragraph 2 – point d – point ii

*Text proposed by the Commission*

*Amendment*

*i) in point (d), point (ii) is replaced by the following:*

Or. en

## Amendment 144

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 20 – point a

Regulation (EU) No 648/2012

Article 24a – paragraph 2 – points e and f (new)

*Text proposed by the Commission*

*Amendment*

**(ii) the following points are added:**

**(e) the competent authorities responsible for the supervision of the three clearing members with the largest contributions, calculated on an aggregate basis over a one-year period, to the default fund, referred to in Article 42 of this Regulation, of each of the CCPs authorised in accordance with Article 14 or recognised in accordance with Article 25 of this Regulation, who shall be non-voting;**

**(f) 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 Council Regulation (EU) No 1024/2013, who shall be non-voting.'**

Or. en

### *Justification*

*The participation of national supervisors and the ECB in the CCP Supervisory Committee will support identifying and addressing the risks resulting from the nexus between banks and CCPs.*

## Amendment 145

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 20 – point c – point ii

Regulation (EU) No 648/2012

Article 24a – paragraph 7 – point bc

*Text proposed by the Commission*

*Amendment*

(bc) prepare draft **opinions** for adoption

(bc) prepare draft **decisions** for adoption



by the Board of Supervisors in *accordance with* Articles 17 and 17b and draft validation decisions in accordance with Article 49;

by the Board of Supervisors in *relation to* Articles 7, 8, 14 to 17b, 20, 21, and 24 and Titles IV and V of this Regulation;

Or. en

## Amendment 146

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 20 – point c – point ii a (new)

Regulation (EU) No 648/2012

Article 24a – paragraph 7 – point c

#### *Present text*

'(c) promote the regular exchange and discussion among competent authorities designated in accordance with Article 22(1) of this Regulation in relation to:

(i) relevant *supervisory activities and decisions that have been adopted* by the competent authorities referred to in Article 22 when carrying out their duties in accordance with this Regulation regarding the authorisation and supervision of CCPs established in their territory;

(ii) *draft decisions submitted to ESMA by a competent authority in accordance with the first subparagraph of Article 23a(2);*

(iii) *draft decisions submitted to ESMA by a competent authority on a voluntary basis in accordance with the second subparagraph of Article 23a(2);*

(iv) relevant market developments, including situations or events which impact or are likely to impact the prudential or financial soundness or the resilience of CCPs authorised in accordance with

#### *Amendment*

*(ii a) point c is replaced by the following:*

'''(c) promote the regular exchange and discussion among competent authorities designated in accordance with Article 22(1) of this Regulation in relation to:

(i) relevant activities *undertaken* by the competent authorities referred to in Article 22 when carrying out their duties in accordance with this Regulation regarding the authorisation and supervision of CCPs established in their territory;

(ii) relevant market developments, including 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 or their clearing members;

*(iii) draft decisions submitted by ESMA in accordance with point (bc);'''*

Article 14 or their clearing members;'

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

## Amendment 147

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 20 a (new)

Regulation (EU) No 648/2012

Article 24b – paragraphs 1 and 2

#### *Present text*

1. With regard to 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 point (f) of Article 25(3). Each central bank of issue may respond. Any response shall be received within 10 working days of the transmission of the draft decision. In emergency situations, the aforementioned period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to 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 **amendments proposed by** the central banks 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

#### *Amendment*

**(20 a) 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, **49**, 50 and 54 in relation to Tier 2 CCPs, the CCP Supervisory Committee shall consult the central banks of issue referred to in point (f) of Article 25(3). Each central bank of issue may respond. Any response shall be received within 10 working days of the transmission of the draft decision. In emergency situations, the aforementioned period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to draft **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 from** the central banks of issue.

2. Where the CCP Supervisory Committee does not reflect in its draft **assessment or draft** decision the **response from** 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 **response of** that central bank of issue, providing an explanation for any deviations from **that**

from **those amendments**. The CCP Supervisory Committee shall submit to the Board of Supervisors the **amendments proposed by** central banks of issue and its explanations for not taking them into account together with its draft decision.

**response**. The CCP Supervisory Committee shall submit to the Board of Supervisors the **responses from** central banks of issue and its explanations for not taking them into account together with its draft decision.

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

### *Justification*

*AM seeks to modify the wording of the Article referring to the 'assessments' and not just the decisions, given that Articles 41, 44, 46, 50 and 54 of EMIR do not refer to any specific decision-making procedures, and given that not all supervisory assessments and procedures may lead to formal decisions of the CCP Supervisory Committee. The objective is to ensure sufficient engagement with central banks of issue on areas related to margins, liquidity risk controls, collateral, and settlement and interoperability arrangements for all relevant supervisory activities and procedures.*

## **Amendment 148**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 21 – point d**

Regulation (EU) No 648/2012

Article 25 – paragraph 7

#### *Text proposed by the Commission*

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.;

#### *Amendment*

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. ***These arrangements shall also establish the procedures for the cooperation between ESMA and the relevant competent authorities of third countries with respect to the formulation and preparation of recovery and resolution plans.*** ;

Or. en

## Amendment 149

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 25

Regulation (EU) No 648/2012

Article 26 – paragraph 1

*Text proposed by the Commission*

1. A CCP shall have 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. A CCP shall not be or become a clearing member, a client, or establish indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at a CCP.;

*Amendment*

1. A CCP shall have 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. ***Without prejudice to interoperability arrangements***, a CCP shall not be or become a clearing member, a client, or establish indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at a CCP.;

Or. en

*Justification*

*See corresponding recital 21*

## Amendment 150

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 25 a (new)

Regulation (EU) No 648/2012

Article 26 – paragraph 8

*Present text*

‘8. The CCP shall be subject to frequent and independent audits. The results of those audits shall be communicated to the board and shall be made available to ***the***

*Amendment*

***(25 a) in Article 26, 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 and shall be made available to

competent authority.’

*ESMA and to the CCP's* competent authority.’”

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 151**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 25 b (new)**

Regulation (EU) No 648/2012

Article 27 – paragraph 3

*Present text*

*Amendment*

'3. A CCP shall clearly determine the roles and responsibilities of the board and shall make the minutes of the board meetings available to *the* competent authority and auditors.'

***(25 b) in Article 27, paragraph 3 is replaced by the following:***

'''3. A CCP shall clearly determine the roles and responsibilities of the board and shall make the minutes of the board meetings available to ***ESMA, the CCP's*** competent authority and auditors.'''

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 152**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 25 c (new)**

Regulation (EU) No 648/2012

Article 28

*Present text*

Article 28

Risk committee

'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. 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.

2. A CCP shall clearly determine the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria and the election mechanism for risk-committee members. The governance arrangements shall be publicly available and shall, at least, determine that the risk committee is chaired by an independent member of the board, reports directly to the board and holds regular meetings.

3. The risk committee shall advise the board on any arrangements that may impact the risk management of the CCP, such as a significant change in its risk model, the default procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. The risk committee shall inform the board in a timely manner of any new risk affecting the resilience of the CCP. The advice of the

*Amendment*

**(25 c) Article 28 is replaced by the following:**

Article 28

Risk committee

"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.

2. A CCP shall clearly determine the mandate, the governance arrangements to ensure its independence, the operational procedures, the admission criteria and the election mechanism for risk-committee members. The governance arrangements shall be publicly available and shall, at least, determine that the risk committee is chaired by an independent member of the board, reports directly to the board and holds regular meetings.

3. The risk committee shall advise the board on any arrangements that may impact the risk management of the CCP, such as a significant change in its risk model, the default procedures, the criteria for accepting clearing members, the clearing of new classes of instruments, or the outsourcing of functions. The risk committee shall inform the board in a timely manner of any new risk affecting the resilience of the CCP. The advice of the

risk committee is not required for the daily operations of the CCP. Reasonable efforts shall be made to consult the risk committee on developments impacting the risk management of the CCP in emergency situations, including on developments relevant to clearing members' exposures to the CCP and interdependencies with other CCPs.

4. Without prejudice to the right of 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.

5. A CCP shall promptly inform 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.'

risk committee is not required for the daily operations of the CCP. Reasonable efforts shall be made to consult the risk committee on developments impacting the risk management of the CCP in emergency situations, including on developments relevant to clearing members' exposures to the CCP and interdependencies with other CCPs.

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.

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.'

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

### **Amendment 153**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 25 d (new)**

Regulation (EU) No 648/2012

Article 29 – paragraph 1



*Present text*

*Amendment*

1. A CCP shall maintain, for a period of at least 10 years, all the records on the services and activity provided so as to enable the competent authority to monitor the CCP's compliance with this Regulation

***(25 d) in Article 29, paragraph 1 is replaced by the following:***

"1. A CCP shall maintain, for a period of at least 10 years, all the records on the services and activity provided so as to enable **ESMA and** the competent authority to monitor the CCP's compliance with this Regulation

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)*

## **Amendment 154**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 25 e (new)**

Regulation (EU) No 648/2012

Article 30

*Present text*

*Amendment*

Article 30

***(25 e) Article 30 is replaced by the following:***

"Article 30

Shareholders and members with qualifying holding

Shareholders and members with qualifying holding

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.

1. **ESMA** 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 refuse to 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.

2. **ESMA** shall refuse to 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.

3. Where close links exist between the

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 of the competent authority.

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.

5. **The competent authority** shall refuse authorisation where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the CCP has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions of **the competent authority**.

CCP and other natural or legal persons, **ESMA** shall grant authorisation only where those links do not prevent the effective exercise of the supervisory functions of the competent authority.

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, **ESMA** shall take appropriate measures to terminate that situation, which may include the withdrawal of the authorisation of the CCP.

5. **ESMA** shall refuse authorisation where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the CCP has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions of **ESMA**.

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

### **Amendment 155**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 26**

Regulation (EU) No 648/2012

Article 31

*Text proposed by the Commission*

*Amendment*

**(26) Article 31 is amended as follows:**

**deleted**

**(a) in paragraph 2, the third and fourth subparagraph 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, acknowledge receipt in writing thereof to the proposed acquirer or vendor and share the information with ESMA and the college.*

*Within 60 working days as from 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 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.;*

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

*The competent authority, ESMA and the college may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.;*

Or. en

## **Amendment 156**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 26 a (new)**

Regulation (EU) No 648/2012

Article 31

Article 31

Information to competent authorities

1. A CCP shall notify its competent authority of any changes to its management, and shall provide **the competent authority** with all **the** information necessary to assess compliance with Article 27(1) and **the** second subparagraph **of Article 27(2)**.

Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP, **the competent authority** shall take appropriate measures, which may include removing that member from the board.

2. Any natural or legal person or such persons acting in concert (the ‘proposed acquirer’), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CCP or to further increase, directly or indirectly, such a qualifying holding in a CCP as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or so that the CCP would become its subsidiary (the ‘proposed acquisition’), shall first notify in writing the competent authority of the CCP in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 32(4).

Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a CCP (the ‘proposed vendor’) shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent

**(26 a) Article 31 is replaced by the following:**

"Article 31

Information to **ESMA and** competent authorities

1. A CCP shall notify **ESMA and** its competent authority of any changes to its management, and shall provide **ESMA** with all information necessary to assess compliance with Article 27(1) and **Article 27(2)**, second subparagraph.

Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP, **ESMA** shall take appropriate measures, which may include removing that member from the board.

2. Any natural or legal person or such persons acting in concert (the ‘proposed acquirer’), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CCP or to further increase, directly or indirectly, such a qualifying holding in a CCP as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or so that the CCP would become its subsidiary (the ‘proposed acquisition’), shall first notify in writing **ESMA and** the competent authority of the CCP in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 32(4).

Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a CCP (the ‘proposed vendor’) shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify **ESMA and** the

authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the CCP would cease to be that person's subsidiary.

**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, acknowledge receipt in writing thereof to the proposed acquirer or vendor.

The competent authority **shall have a maximum of 60** working days as from 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) (the assessment period), **to** carry out the assessment provided for in Article 32(1) (the assessment). **The competent authority shall inform the proposed acquirer or vendor of the date of the expiry of the assessment period at the time of acknowledging receipt.**

3. The competent authority may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

The assessment period shall be interrupted for the period between the date of request for information by **the competent authority** and the receipt of a response thereto by the proposed acquirer. The interruption shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the CCP would cease to be that person's subsidiary.

**ESMA** 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, acknowledge receipt in writing thereof to the proposed acquirer or vendor **and share the information with the competent authority and the college.**

**Within 60** working days as from 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'), **ESMA shall** carry out the assessment provided for in Article 32(1) ('the assessment'). **The college shall issue an opinion pursuant to Article 19 in accordance with the procedure under Article 17b during the assessment period.;**

3. The competent authority, **ESMA and the college** may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

The assessment period shall be interrupted for the period between the date of request for information by **ESMA** and the receipt of a response thereto by the proposed acquirer. The interruption shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

4. **The competent authority** may extend the interruption referred to in the second subparagraph of paragraph 3 up to 30 working days where the proposed acquirer or vendor is either:

(a) situated or regulated outside the Union;

(b) a natural or legal person not subject to supervision under this Regulation or Directive 73/239/EEC, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance ( 17 ) or Directives 2002/83/EC, 2003/41/EC, 2004/39/EC, 2005/68/EC, 2006/48/EC, 2009/65/EC or 2011/61/EU.

5. Where **the competent authority**, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. **The competent authority** shall notify the college referred to in Article 18 accordingly. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. However, **Member States may allow a competent authority to** make such disclosure in the absence of a request by the proposed acquirer.

6. Where **the competent authority** does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

7. **The competent authority** may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

**8. Member States shall not impose requirements for notification to, and approval by, the competent authority of direct or indirect acquisitions of voting rights or capital that are more stringent**

4. **ESMA** may extend the interruption referred to in the second subparagraph of paragraph 3 up to 30 working days where the proposed acquirer or vendor is either:

(a) situated or regulated outside the Union;

(b) a natural or legal person not subject to supervision under this Regulation or Directive 73/239/EEC, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance ( 17 ) or Directives 2002/83/EC, 2003/41/EC, 2004/39/EC, 2005/68/EC, 2006/48/EC, 2009/65/EC or 2011/61/EU.

5. Where **ESMA**, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. **ESMA** shall notify **the competent authority and** the college referred to in Article 18 accordingly. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. However, **ESMA may** make such disclosure in the absence of a request by the proposed acquirer.

6. Where **ESMA** does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

7. **ESMA** may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

*than those set out in this Regulation.*

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 157**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 27**

Regulation (EU) No 648/2012

Article 32 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

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

*deleted*

*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 pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.;*

Or. en

**Amendment 158**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 27 a (new)**

Regulation (EU) No 648/2012

Article 32



Article 32

Assessment

1. Where assessing the notification provided for in Article 31(2) and the information referred to in Article 31(3), **the competent authority** shall, in order to ensure the sound and prudent management of the CCP in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the CCP, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following:

- (a) the reputation and financial soundness of the proposed acquirer;
- (b) the reputation and experience of any person who will direct the business of the CCP as a result of the proposed acquisition;
- (c) whether the CCP will be able to comply and continue to comply with this Regulation;
- (d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

Where assessing the financial soundness of the proposed acquirer, **the competent authority** shall pay particular attention to the type of business pursued and envisaged in the CCP in which the acquisition is proposed.

Where assessing the CCP's ability to comply with this Regulation, **the competent authority** shall pay particular

**(27 a) Article 32 is replaced by the following:**

"Article 32

Assessment

"1. Where assessing the notification provided for in Article 31(2) and the information referred to in Article 31(3), **ESMA** shall, in order to ensure the sound and prudent management of the CCP in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the CCP, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following:

- (a) the reputation and financial soundness of the proposed acquirer;
- (b) the reputation and experience of any person who will direct the business of the CCP as a result of the proposed acquisition;
- (c) whether the CCP will be able to comply and continue to comply with this Regulation;
- (d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

Where assessing the financial soundness of the proposed acquirer, **ESMA** shall pay particular attention to the type of business pursued and envisaged in the CCP in which the acquisition is proposed.

Where assessing the CCP's ability to comply with this Regulation, **ESMA** shall pay particular attention to whether the

attention to whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and to determine the allocation of responsibilities among the competent authorities.

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 pursuant to Article 19.

2. **The competent authorities** may oppose the proposed acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided by the proposed acquirer is incomplete.

3. Member States shall **neither** impose any prior conditions in respect of the level of holding that shall be acquired **nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.**

4. **Member States** shall make publicly available a list specifying the information that is necessary to carry out the assessment and that shall be provided to the competent authorities at the time of notification referred to in Article 31(2). The information required shall be proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition. **Member States** shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 31(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same CCP have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

6. The relevant competent authorities shall

group of which it will become a part has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and to determine the allocation of responsibilities among the competent authorities.

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 pursuant to Article 19.

2. **ESMA** may oppose the proposed acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided by the proposed acquirer is incomplete.

3. Member States shall **not** impose any prior conditions in respect of the level of holding that shall be acquired.

4. **ESMA** shall make publicly available a list specifying the information that is necessary to carry out the assessment and that shall be provided to **ESMA and** the competent authorities at the time of notification referred to in Article 31(2). The information required shall be proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition. **ESMA** shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 31(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same CCP have been notified to **ESMA and** the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

6. **ESMA and** the relevant competent



cooperate closely with each other when carrying out the assessment where the proposed acquirer is one of the following:

(a) another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(b) the parent undertaking of another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(c) a natural or legal person controlling another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State.

7. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. The competent authorities shall, upon request, communicate all relevant information to each other and shall communicate all essential information at their own initiative. A decision by *the competent authority* that has authorised the CCP in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

authorities shall cooperate closely with each other when carrying out the assessment where the proposed acquirer is one of the following:

(a) another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(b) the parent undertaking of another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State;

(c) a natural or legal person controlling another CCP, a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm, market operator, an operator of a securities settlement system, a UCITS management company or an AIFM authorised in another Member State.

7. **ESMA and** the competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. **ESMA and** the competent authorities shall, upon request, communicate all relevant information to each other and shall communicate all essential information at their own initiative. A decision by **ESMA** that has authorised the CCP in which the acquisition is proposed shall indicate any views or reservations expressed by **ESMA or** the competent authority responsible for the proposed acquirer.

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

## Amendment 159

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 28 – point -a (new)

Regulation (EU) No 648/2012

Article 35 – paragraph 1 – subparagraph 1 – point i

*Present text*

(i) the service provider cooperates with **the competent authority** in connection with the outsourced activities;

*Amendment*

**(-a) in paragraph 1, the first subparagraph, point (i) is replaced by the following:**

(i) the service provider cooperates with **ESMA** in connection with the outsourced activities;

Or. en

## Amendment 160

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 28 – point a

Regulation (EU) No 648/2012

Article 35 – paragraph 1 – subparagraph 2i

*Text proposed by the Commission*

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 pursuant to Article 19 **and an opinion by ESMA pursuant to Article 24a(7)(bc) issued** in accordance with the procedure set out in Article 17b.;

*Amendment*

A CCP shall not outsource major activities linked to risk management unless such outsourcing is approved by **ESMA**. The decision of **ESMA** shall be subject to an opinion of the college pursuant to Article 19 **in accordance with the procedure set out in Article 17b.**

Or. en

## Amendment 161

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 28 – point a a (new)

Regulation (EU) No 648/2012

Article 35 – paragraph 2

*Present text*

*Amendment*

2. **The competent authority** shall require the CCP to allocate and set out its rights and obligations, and those of the service provider, clearly in a written agreement.

**(aa) paragraph 2 is replaced by the following:**

2. **ESMA** shall require the CCP to allocate and set out its rights and obligations, and those of the service provider, clearly in a written agreement.

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## **Amendment 162**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 29 – point a**

Regulation (EU) No 648/2012

Article 37 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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. The criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the

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***, the criteria shall ensure that CCPs or clearing houses cannot be clearing

CCP.;

members, directly or indirectly, of the  
CCP.;

Or. en

*Justification*

*See recital 21.*

**Amendment 163**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 29 – point b**

Regulation (EU) No 648/2012

Article 37 – paragraph 1a – subparagraph 2

*Text proposed by the Commission*

***The competent authority of a CCP accepting non-financial counterparties shall regularly review such arrangements and report to ESMA and the college on their appropriateness.***

*Amendment*

***ESMA shall regularly review the arrangements put in place by a CCP accepting non-financial counterparties and report to the CCP's competent authority and to the college on their appropriateness.***

Or. en

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 164**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 29 – point c**

Regulation (EU) No 648/2012

Article 37 – paragraph 7 – subparagraph 1

*Text proposed by the Commission*

ESMA shall, after having consulted the EBA, develop draft regulatory technical standards further specifying the elements to be considered when laying down the admission criteria referred to in paragraph

*Amendment*

ESMA shall, after having consulted the EBA, develop draft regulatory technical standards further specifying the elements to be considered when laying down the admission criteria referred to in paragraph 1 ***and the participation requirements for***

1. *accepting non-financial counterparties as clearing members in accordance with paragraph 1a*

Or. en

*Justification*

*ESMA's mandate to develop the relevant draft regulatory technical standards should also extend to non-financial counterparties' direct access to a CCP. The liquidity profile of such types of counterparties should need to be more carefully assessed by a CCP, especially whether they are able to meet potential increases in margin requirements or default fund contributions on a timely basis, even under stressed market conditions.*

**Amendment 165**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 30**

Regulation (EU) No 648/2012

Article 38

*Text proposed by the Commission*

*Amendment*

**(30)** *Article 38 is amended as follows:* **deleted**

**(a)** *in paragraph 7, the following subparagraph is added:*

***Clearing members providing clearing services and clients providing clearing services shall inform their clients in a clear and transparent manner of the way the margin models of the CCP work, including in stress situations, and provide them with a simulation of the margin requirements they may be subject to under different scenarios. This shall include both the margins required by the CCP and any additional margins required by the clearing members and the clients providing clearing services themselves.;***

**(b)** *paragraph 8 is replaced by the following:*

***8. 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.;*

Or. en

## Amendment 166

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 30 a (new)

Regulation (EU) No 648/2012

Article 38

#### *Present text*

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 the competent authority.

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

#### *Amendment*

***(30 a) 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 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.

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, **after consulting ESMA**, 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, on a gross basis, that the CCP may require upon the clearing of a new transaction. That tool shall only be accessible on a secured access basis, and the results of the simulation shall not be binding.

7. A CCP shall provide its clearing members with information on the initial margin models it uses. That information shall:

- (a) clearly explain the design of the initial margin model and how it operates;
- (b) clearly describe the key assumptions

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.

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 **ESMA, after consulting** 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, on a gross basis, that the CCP may require upon the clearing of a new transaction. That tool shall only be accessible on a secured access basis, and the results of the simulation shall not be binding.

7. A CCP shall provide its clearing members with information on the initial margin models it uses. That information shall:

- (a) clearly explain the design of the initial margin model and how it operates;
- (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. The clearing members of the CCP 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.

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 inform their clients in a clear and transparent manner of the way the margin models of the CCP work, including in stress situations, and provide them with a simulation of the margin requirements that they might be subject to under different scenarios. That simulation shall include both the margins required by the CCP and any additional margins required by the clearing members and the clients providing clearing services themselves.***

***A CCP shall provide its clearing members providing clearing services and clients providing clearing services with any information they require to comply with the provisions under the first subparagraph, unless that information is already provided pursuant to the provisions as referred to in paragraphs 1 to 7 of this Article. Upon request by one of its clearing members providing clearing services and clients providing clearing services, the CCP shall transmit that information without delay.***

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.



**10. ESMA shall, in consultation with EBA and the ESCB, develop draft regulatory technical standards further specifying the information to be provided pursuant to this Article.**

**ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 months after entry into force of this amending Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'**

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

#### *Justification*

*The development of draft regulatory technical standards in relation to transparency requirements applicable to CCPs and client clearing service providers would considerably enhance the standardisation and the quality of such disclosures. These draft regulatory technical standards would also ensure effective interaction between CCPs and client clearing service providers concerning their respective margin practices disclosure responsibilities. Furthermore, ongoing international work under the auspices of the Basel Committee on Banking Supervision, the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions may result in further elaborations with respect to margin transparency, in particular the elements referred to in paragraphs 6 to 8 of Article 38 of EMIR.*

#### **Amendment 167**

##### **Proposal for a regulation**

##### **Article 1 – paragraph 1 – point 31 – point a**

Regulation (EU) No 648/2012

Article 41 – paragraph 2

##### *Text proposed by the Commission*

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

##### *Amendment*

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 shall be validated by **the competent authority** and subject to an opinion in accordance with Article 19 **and an opinion by ESMA in accordance with Article 24a(7), first subparagraph, point (bc), issued** in accordance with the procedure under Article 17b.

the possibility of changes over the duration of the transaction. The models shall be validated by **ESMA** and subject to an opinion in accordance with Article 19 in accordance with the procedure under Article 17b.

Or. en

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

### **Amendment 168**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 31 – point a**

Regulation (EU) No 648/2012

Article 41 – paragraph 3

#### *Text proposed by the Commission*

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 the potential impact of its intraday margin collections and payments on the liquidity position of its participants. ***A CCP shall strive to the best of its ability not to hold intraday variation margin calls after all payments due have been received.***;

#### *Amendment*

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 the potential impact of its intraday margin collections and payments on the liquidity position of its participants.

Or. en

#### *Justification*

*The sentence should be deleted. The wording "shall strive to the best of its ability" is unclear and creates significant legal uncertainty. In addition, the article already includes a requirement for CCP to consider the impact that intraday margin calls may have on the liquidity positions of their participants, and margin requirements are already regulated via this Article and the related RTS (EU) No 153/2013.*

## Amendment 169

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 32

Regulation (EU) No 648/2012

Article 44 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

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, **including** clearing members or liquidity providers, to which it has the largest exposures.;

#### *Amendment*

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, **being either** clearing members or liquidity providers, to which it has the largest exposures.;

Or. en

#### *Justification*

*Clarification that the requirement for CCPs to be prepared to cover the default of the two largest “entities” to which it has exposures covers clearing members and liquidity providers, but not other Financial Market Infrastructures such as interoperable CCPs.*

## Amendment 170

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 33 – point a

Regulation (EU) No 648/2012

Article 46 – paragraph 1

#### *Text proposed by the Commission*

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 accept public guarantees or public bank or commercial bank guarantees, provided that they are unconditionally available upon request within the liquidation period referred to in Article 41. Where bank guarantees are provided to a CCP, that CCP shall take them into account when calculating its exposure to

#### *Amendment*

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 accept public guarantees or public bank or commercial bank guarantees, **including on an uncollateralised basis for non-financial counterparties**, provided that they are unconditionally available upon request within the liquidation period referred to in Article 41. Where bank guarantees are provided to a CCP, that

the bank that is also a clearing member. The CCP shall apply adequate haircuts to asset values and guarantees to reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. When revising the level of the haircuts it applies to the assets it accepts as collateral, the CCP shall take into account any potential procyclicality effects of such revisions.;

CCP shall take them into account when calculating its exposure to the bank that is also a clearing member. The CCP shall apply adequate haircuts to asset values and guarantees to reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. When revising the level of the haircuts it applies to the assets it accepts as collateral, the CCP shall take into account any potential procyclicality effects of such revisions.;

Or. en

## **Amendment 171**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 33 – point a**

Regulation (EU) No 648/2012

Article 46 – paragraph 1a (new)

*Text proposed by the Commission*

*Amendment*

**(aa) the following paragraph is inserted:**

**1a. Until ... [the date of entry into force of this Regulation] and the application of paragraph 1 of this Article, the provisions included in Article 1 of the European Commission Delegated Regulation 2022/2311 shall continue to apply.**

Or. en

*Justification*

*The amendments extends the validity of the temporary measures (introduced during the energy crisis) allowing the use of uncollateralised bank guarantees in some cases until the*

entry into force of this Regulation, in order to give certainty to the markets regarding the acceptance of collaterals.

## Amendment 172

### Proposal for a regulation

Article 1 – paragraph 1 – point 33 – point b a (new)

Regulation (EU) No 648/2012

Article 46 – paragraph 3 – subparagraph 1 – point c (new)

*Present text*

(c) the conditions under which **commercial bank** guarantees may be accepted as collateral under paragraph 1.

*Amendment*

**(ba) in paragraph 3, first subparagraph, the following point (c) is replaced by the following:**

“(c) the conditions under which **public** guarantees, **public bank guarantees and commercial bank guarantees** may be accepted as collateral under paragraph 1.

***When specifying these conditions, ESMA shall establish a minimum standard of acceptance, and shall leave 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 where appropriate, subject to appropriate concentration limits, credit quality requirements and stringent wrong-way risk requirements.***”

Or. en

## Amendment 173

### Proposal for a regulation

Article 1 – paragraph 1 – point 33 a (new)

Regulation (EU) No 648/2012

Article 48 – paragraph 3

*Present text*

*Amendment*

**(33 a) in Article 48, paragraph 3 is replaced by the following:**

'3. Where a CCP considers that the clearing member will not be able to meet its future obligations, it shall promptly inform the competent authority before the default procedure is declared or triggered. **The competent authority** shall promptly communicate that information **to ESMA**, to the relevant members of the ESCB and to the authority responsible for the supervision of the defaulting clearing member.'

'''3. Where a CCP considers that the clearing member will not be able to meet its future obligations, it shall promptly inform **ESMA and** the competent authority before the default procedure is declared or triggered. **ESMA** shall promptly communicate that information to the relevant members of the ESCB and to the authority responsible for the supervision of the defaulting clearing member.'

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

### **Amendment 174**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 ESMA of the results of the tests performed and shall obtain **ESMA's** validation in accordance with paragraphs 1a, to 1e before adopting any significant change to the models **and parameters**.

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 175****Proposal for a regulation****Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 176****Proposal for a regulation****Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1a – subparagraph 1

*Text proposed by the Commission*

Where a CCP intends to adopt any **significant** change to the models referred to in paragraph 1, it shall submit an application for **authorisation** of such change in an electronic format via the central database referred to in Article 17(7) where it shall be immediately shared with **the CCP's competent authority**, ESMA and the college. The CCP shall enclose an independent validation of the intended change to its application.

*Amendment*

Where a CCP intends to adopt any change to the models **and parameters** referred to in paragraph 1, it shall submit an application for **validation** of such change in an electronic format via the central database referred to in Article 17(7) where it shall be immediately shared with ESMA and the college. The CCP shall enclose an independent validation of the intended change to its application.

## Amendment 177

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 34 – point a

Regulation (EU) No 648/2012

Article 49 – paragraph 1a – subparagraph 2

#### *Text proposed by the Commission*

Where a CCP considers that the change to the models referred to in paragraph 1 it intends to adopt is not significant as referred to paragraph 1g, the CCP shall request that the application be subject to a non-objection procedure under paragraph 1b. ***In that case, the CCP may start applying such change before the decision of the CCP's competent authority and ESMA pursuant to paragraph 1b.***

#### *Amendment*

Where a CCP considers that the change to the models ***and parameters*** referred to in paragraph 1 it intends to adopt is not significant as referred to ***in*** paragraph 1g, the CCP shall request that the application be subject to a non-objection procedure under paragraph 1b.

Or. en

#### *Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

## Amendment 178

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 34 – point a

Regulation (EU) No 648/2012

Article 49 – paragraph 1a – subparagraph 3

#### *Text proposed by the Commission*

***The CCP's competent authority shall, in cooperation with ESMA, within 2 working days after such application has been received, acknowledge receipt of the application, confirming to the CCP that it contains the required documents. Where one of them concludes that the application does not contain the required documents, the application shall be rejected.***

#### *Amendment*

***ESMA shall, within 2 working days after such application has been received, acknowledge receipt of the application, confirming to the CCP that it contains the required documents. Where ESMA concludes that the application does not contain the required documents, the application shall be rejected.***



*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 179****Proposal for a regulation****Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1b – subparagraph 1

*Text proposed by the Commission*

Within 10 working days of the date referred to in the third subparagraph of paragraph 1a, ***the competent authority and ESMA*** shall assess if the proposed change qualifies as a significant change pursuant to paragraph 1g. Where ***one of them*** concludes that the change meets one of the conditions referred to in paragraph 1g, the application shall be assessed under paragraphs 1c, 1d and 1e and ***the CCP's competent authority, in cooperation with ESMA***, shall inform in writing the applicant CCP thereof.

*Amendment*

Within 10 working days of the date referred to in the third subparagraph of paragraph 1a, ***ESMA, after considering the input of the college***, shall assess if the proposed change qualifies as a significant change pursuant to paragraph 1g. Where ***ESMA*** concludes that the change meets one of the conditions referred to in paragraph 1g, the application shall be assessed under paragraphs 1c, 1d and 1e and ***ESMA*** shall inform in writing the applicant CCP thereof.

*Justification*

*Change to reflect the move to ESMA as the supervisor of EU CCPs. See explanatory statement for greater details.*

**Amendment 180****Proposal for a regulation****Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1c – introductory part

*Text proposed by the Commission*

1c. Within 30 working days of the date referred to in the third subparagraph of paragraph 1a:

*Amendment*

1c. Within 30 working days of the date referred to in the third subparagraph of paragraph 1a, ***ESMA shall conduct a risk assessment of the significant change and adopt a decision, and shall submit its report and decision to the CCP's competent authority and the college.***

***Within 10 working days of receipt of the report and decision by ESMA, the college shall adopt an opinion pursuant to Article 19 and transmit it to ESMA and ESMA shall adopt its decision, taking into account the opinion of the college***

***Where ESMA decides not to validate the change, the CCP's application for validation shall be refused.***

Or. en

**Amendment 181**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1c – point a

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. en

**Amendment 182**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1c – point b

*Text proposed by the Commission*

*Amendment*

**(b) ESMA shall conduct a risk assessment of the significant change and submit its report to the CCP competent authority and the college.**

**deleted**

Or. en

## **Amendment 183**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1d

*Text proposed by the Commission*

*Amendment*

**1d. Within 10 working days of receipt of the reports referred to in paragraph 1c, the CCP's competent authority and ESMA shall each adopt a decision, taking into account such reports and inform each other of the decision taken. Where one of them has not validated the change, the validation shall be refused.**

**deleted**

Or. en

## **Amendment 184**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 34 – point a**

Regulation (EU) No 648/2012

Article 49 – paragraph 1e

*Text proposed by the Commission*

*Amendment*

**1e. Within 5 working days of the decisions being adopted under paragraph 1d, *the competent authority and* ESMA shall inform the CCP in writing, including a fully reasoned explanation, whether the validation has been granted or refused.**

**1e. Within 5 working days of the decisions being adopted under paragraph 1d, ESMA shall inform the CCP in writing, including a fully reasoned explanation, whether the validation has been granted or refused.**

**Amendment 185****Proposal for a regulation****Article 1 – paragraph 1 – point 34 – point b**

Regulation (EU) No 648/2012

Article 49 – paragraph 1f

*Text proposed by the Commission*

1f. The CCP may not adopt any significant change to the models referred to in paragraph 1, before obtaining the validations by ***its competent authority and ESMA. The competent authority, in agreement with*** ESMA, may allow for a provisional adoption of a significant change of those models prior to their validations where duly justified due to an emergency situation under Article 24 of this Regulation. Such a temporary change to the models shall only be allowed for a certain period of time ***jointly*** specified by ***the CCP's competent authority and*** ESMA. After the expiry of this period, the CCP shall not be allowed to use such model change unless it has been approved pursuant to paragraphs 1a, 1c, 1d and 1e.

*Amendment*

1f. The CCP may not adopt any significant change to the models ***and parameters*** referred to in paragraph 1, before obtaining the validations by ESMA. ESMA, may allow for a provisional adoption of a significant change of those models prior to their validations where duly justified due to an emergency situation under Article 24 of this Regulation. Such a temporary change to the models shall only be allowed for a certain period of time specified by ESMA. After the expiry of this period, the CCP shall not be allowed to use such model change unless it has been approved pursuant to paragraphs 1a, 1c, 1d and 1e.

**Amendment 186****Proposal for a regulation****Article 1 – paragraph 1 – point 34 – point b**

Regulation (EU) No 648/2012

Article 49 – paragraph 1g

*Text proposed by the Commission*

***1g. A change shall be considered as significant where one of following conditions is met:***

***(a) the change leads to a decrease or***

*Amendment*

***deleted***

***increase of the total pre-funded financial resources, including margin requirements, default fund and skin-in-the-game, greater than 15 %;***

***(b) the structure, structural elements or the margin parameters of the margin model are changed or a margin module is introduced, removed, or amended in a manner which leads to a decrease or increase of this margin module greater than 15 % at the CCP level;***

***(c) the methodology used to compute portfolio offsets is changed leading to a decrease or increase of the total margin requirements for these financial instruments greater than 10 %;***

***(d) the methodology for defining and calibrating stress test scenarios for the purpose of determining default fund exposures, is changed, leading to a decrease or increase greater than 20 % of a default fund, or greater than 50 % of any individual default fund contribution;***

***(e) the methodology applied to assess liquidity risk and monitor concentration risk, is changed, leading to a decrease or increase of the estimated liquidity needs in any currency greater than 20 % or the total liquidity needs greater than 10 %;***

***(f) the methodology applied to value collateral, calibrate collateral haircut or set concentration limits, is changed, such that the total value of non-cash collateral decreases or increases by more than 10 %; provided that the CCP's proposed change does not fulfil any criteria for the extension of CCP's authorisation specified in Article 2(1);***

***(g) any other change to the models that could have a material effect on the overall risk of the CCP.***

Or. en

*Justification*

*Replaced by below paragraph 1g*

**Amendment 187**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 34 – point b**

Regulation (EU) No 648/2012

Article 49 – paragraph 1ga (new)

*Text proposed by the Commission*

*Amendment*

***1g a. Changes to parameters derived from external input or which are within a pre-defined range, where such amendment or range to recalibrate a model is part of the model or methodology approved and validated under this Article, shall not be considered a change to the models and parameters and require a validation in accordance with this Article.***

Or. en

*Justification*

*New paragraph to reflect that minor 'business-as-usual' changes do not require to follow a full approval process. Having minor changes not subject to any approval procedure represent the current practice of CCPs in line with EMIR and avoid unnecessarily burdening the relevant authorities with bureaucratic procedures.*

**Amendment 188**

**Proposal for a regulation**

**Article 1 – paragraph 1 – point 34 – point b**

Regulation (EU) No 648/2012

Article 49 – paragraph 1g b (new)

*Text proposed by the Commission*

*Amendment*

***1g b. A change shall be considered as significant where one or more of the following conditions is met:***

***(a) the change leads to a decrease or***

*increase of the total pre-funded financial resources, including margin requirements, default fund and skin-in-the-game, of more than 15%;*

*(b) the methodology for defining and calibrating stress test scenarios for the purpose of determining default fund exposures, is changed, leading to a decrease or increase of more than 20 % of a default fund or of more than 50 % of any individual default fund contribution;*

*(c) the methodology applied to assess liquidity risk and monitor concentration risk, is changed, leading to a decrease or increase of the estimated liquidity needs in any currency of more than 20 % or the total liquidity needs of more than 20 %;*

*(d) the methodology applied to value collateral, or calibrate collateral haircut, is changed, such that the total value of collateral decreases or increases by more than 20%;*

*(e) any other change to the models that could have a material effect on the overall risk of the CCP.*

Or. en

## **Amendment 189**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 34 – point c**

Regulation (EU) No 648/2012

Article 49 – paragraph 5 – subparagraph 1

#### *Text proposed by the Commission*

ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that shall accompany an application for validation pursuant to paragraph 1a and shall specify the information such documents shall contain to demonstrate that the CCP complies with

#### *Amendment*

ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying:

all relevant requirements of this Regulation.

*(a) the list of required documents that shall accompany an application for validation pursuant to paragraph 1a and shall specify the information such documents shall contain to demonstrate that the CCP complies with all relevant requirements of this Regulation; and*

*(b) the elements and indicators to assess for the purposes of deciding whether an effect is to be considered as having a material effect on the overall risk of the CCP under paragraph 1g(g).*

Or. en

## **Amendment 190**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 34 – point d a (new)**

Regulation (EU) No 648/2012

Article 49 – paragraph 7 (new)

*Text proposed by the Commission*

*Amendment*

*(d a) the following paragraph is added:*

*'7. The Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation by specifying any changes to the list of conditions defining a significant change listed under paragraph 1g, where such a change would not result in an increased risk to the CCP.';*

Or. en

## **Amendment 191**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 35**

Regulation (EU) No 648/2012

Article 54 – paragraph 1



*Text proposed by the Commission*

*Amendment*

**(35) in Article 54, paragraph 1 is replaced by the following:**

**deleted**

**1. An interoperability arrangement 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 24a(7), first subparagraph, point (bc), and the college in accordance with Article 19, and issued in accordance with the procedure set out in Article 17b.;**

Or. en

## **Amendment 192**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point 35 a (new)**

Regulation (EU) No 648/2012

Article 54

*Present text*

*Amendment*

Article 54

Approval of interoperability arrangements

1. An interoperability arrangement shall be subject to the prior approval of **the competent authorities** of the **CCPs involved**. The procedure **under Article 17** shall **apply**.

**2. The competent authorities** shall grant approval of the interoperability arrangement only where the CCPs involved have been authorised to clear under Article 17 or recognised under Article 25 or authorised under a pre-existing national authorisation regime for a period of at least three years, the requirements laid down in

**(35 a) Article 54 is replaced by the following:**

Article 54

Approval of interoperability arrangements

"1. An interoperability arrangement shall be subject to the prior approval of **ESMA**. **ESMA shall request the opinion of the college in accordance with Article 19, and issued in accordance with** the procedure **set out in Article 17b**.

**ESMA shall assess whether authorised and recognised CCPs that at the time of the entry into force of this Regulation already have interoperability arrangements in place shall be subject to this Article, and communicate its decision in writing to the relevant CCPs within 60 working days from ... [the date of the**

Article 52 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and the arrangement does not undermine the effectiveness of supervision.

3. Where **a competent authority** considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the **other competent authorities and the CCPs involved. It shall also notify ESMA, which shall issue an opinion on the effective validity of the risk considerations as grounds for denial of the interoperability arrangement. ESMA's opinion shall be made available to all the CCPs involved. Where ESMA's opinion differs from the assessment of the relevant competent authority, that competent authority shall reconsider its position, taking into account ESMA's opinion.**

4. By 31 December 2012, ESMA shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements, 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.

**entry into force of this Regulation].**

2. **ESMA** shall grant approval of the interoperability arrangement only where the CCPs involved have been authorised to clear under Article 17 or recognised under Article 25 or authorised under a pre-existing national authorisation regime for a period of at least three years, the requirements laid down in Article 52 are met and the technical conditions for clearing transactions under the terms of the arrangement allow for a smooth and orderly functioning of financial markets and the arrangement does not undermine the effectiveness of supervision.

3. Where **ESMA** considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the CCPs involved.

4. By 31 December 2012, ESMA shall issue guidelines or recommendations with a view to establishing consistent, efficient and effective assessments of interoperability arrangements, 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.**

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0648-20220812>)

## Amendment 193

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 35 b (new)

Regulation (EU) No 648/2012

Article 81 – paragraph 3 – subparagraph 1 – point s (new)

*Text proposed by the Commission*

*Amendment*

***(35 b) in Article 81(3), the following point is added :***

***"(s) the members of the Joint Monitoring Mechanism referred to in Article 23c."***

Or. en

*Justification*

*Extension of Article 81 to grant the JMM members access to trade repository data to facilitate the exercise of its functions and to facilitate exchange of information between its member institutions.*

## Amendment 194

### Proposal for a regulation

#### Article 1 – paragraph 1 – point 37 – point c a (new)

Regulation (EU) No 648/2012

Article 89 – paragraph 10

*Text proposed by the Commission*

*Amendment*

***(c a) in Article 89, the following paragraph is added :***

***“ 10. Financial counterparties that are subject to the clearing obligation referred to in Article 4(1) on ... [the date of entry into force of this Regulation] or that become subject to the clearing obligation in accordance with Article 4a(1) and non-financial counterparties that are subject to the clearing obligation referred to in Article 4(1) on ... [the date of entry into force of this Regulation] or that become subject to the clearing obligation in accordance with Article 10(1), second subparagraph, shall remain subject to that clearing obligation and shall***

*continue clearing until such financial counterparty or non-financial counterparty demonstrates to the relevant competent authority that its aggregate month-end average position for the previous 12 months does not exceed the relevant clearing thresholds set by the regulatory technical standards referred to in Article 10(4), point (b), and where such regulatory technical standards have entered into force providing the levels of the clearing thresholds for uncleared derivatives and the level of any activity threshold.”*

Or. en

## **Amendment 195**

### **Proposal for a regulation**

**Article 1 – paragraph 1 – point 37 – point c b (new)**

Regulation (EU) No 648/2012

Article 89 – paragraph 10 (new)

*Text proposed by the Commission*

*Amendment*

*(c b) the following paragraph is added:*

*10. By ... [18 months after the date of entry into force of this Regulation] ESMA shall, in close cooperation with the ESRB and the Joint Monitoring Mechanism, assess how the provisions of Article 15, Articles 17 to 17b and Article 49 have been applied.*

*In particular, that assessment shall establish:*

*(a) whether the changes introduced by Regulation (EU) .../... of the European Parliament and of the Council\*+ have obtained the desired effect with respect to increasing the competitiveness of EU CCPs and reduce the regulatory burden they face;*

*(b) whether the changes introduced by Regulation (EU) .../...+ have reduced the*

*time-to-market for new services and products without negatively impacting the risk for the CCP or its clearing members or their clients;*

*(c) whether the introduction of the possibility for CCPs to implement directly changes that qualify neither as material nor as non-material for the purposes of Articles 17, 17a and 49, have negatively impacted the risk profile of that CCP or have increased the overall financial stability risks in the Union, and whether they should be amended.*

*ESMA shall submit that report to the European Parliament, the Council and the Commission.*

*The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to modify certain elements of the definitions laid down in Article 15, Articles 17 to 17b and Article 49 to consider the assessment contained in the report pursuant to the first and second subparagraphs of this Article.*

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*\* Regulation (EU) .../... 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 ..., ..., p. ....).*

*+ OJ: Please insert the year and the number of this amending Regulation in the text and complete the corresponding footnote.*

Or. en

## Amendment 196

### Proposal for a regulation

#### Article 3 – paragraph 1 – point 2 – point a

Regulation (EU) 2017/1131

Article 17 – paragraph 4

#### *Text proposed by the Commission*

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.;

#### *Amendment*

4. The aggregate risk exposure to the same counterparty of an MMF stemming from derivative ***or repurchase agreement*** 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.;

Or. en

#### *Justification*

*Limiting MMF uncleared exposure to the repo market (currently widely used) would incentivize central clearing by MMFs.*

## EXPLANATORY STATEMENT

In the wake of the 2008/9 financial crisis, the derivatives market was brought to the spotlight, highlighting the role that these financial instruments play in the economy as well as the risks that they mitigate and the risks that they bring.

In 2012, the EU adopted the European Market Infrastructure Regulation (EMIR), which introduced reporting requirements for derivatives transactions and risk-mitigation measures, notable the obligation to clear certain transactions at a CCP or by exchanging collateral (margins) in bilateral transactions. EMIR expanded central clearing and made the Union's markets more stable, resilient, transparent, efficient, and, overall, safer. EMIR 2.2 attempted to introduce changes to adapt the regulatory framework for the clearing ecosystem in the Union and make it even safer.

Since the enter into force of EMIR 2.2, the clearing landscape in the Union has undergone significant changes. The role of CCPs - and the risks that they manage - has grown considerably, with 14 EU CCPs expanding their services across markets, currencies and owners, and in certain cases, in multiple jurisdictions. The withdrawal of the United Kingdom from the Union - and the change in the status of UK CCPs, now third-country CCPs (TC-CCPs) - significantly altered the market dynamics and increased the reliance of EU clearing members and clients on market infrastructure of third-country jurisdiction. The global pandemic, the Russian aggression on Ukraine, the energy crisis, and high-inflation, all increased the risks in the system, affected the orderly functioning of the markets and offered invaluable lessons for the future of the EU clearing ecosystem.

EMIR 3.0 provides an opportunity to reassess post-trade market infrastructures in light of the abovementioned changes and ensure that the EU clearing ecosystem remains safe, robust and competitive.

The Commission proposal offers a good starting point for the discussions, but it is clear that there is room for improvement. The changes require careful calibrations, in the spirit of an overall balanced approach and to the long-term benefit of EU market participants and financial system resilience.

The Rapporteur has extensively engaged with the Commission, ESMA, the ECB, the ESRB, market participants and other relevant stakeholders, and is proposing a text that is coherent,

measured and impactful. Overall, the amendments are guided by three main objectives:

- i. increase of the attractiveness and the competitiveness of the EU clearing ecosystem;
- ii. increase of demand for clearing services at EU CCPs;
- iii. establishing an adequate supervisory framework.

### **Supply and demand side measures**

The Rapporteur is of the opinion that the objectives proposed by the Commission in relation to increasing the attractiveness of EU CCPs ('supply side') and increasing the demand for clearing at EU CCPs ('demand side') are interrelated.

Enabling EU CCPs to expand their offerings more rapidly, simplifying and reducing the burden that they face should be a key objectives of the revised EMIR framework. More efficient regulatory approval timelines are essential for the competitiveness of EU CCPs on a global scale: the lengthy and complex procedures that EU CCPs have to go through when asking for an extension of service or the approval of a new one are reducing their competitiveness and broader attractiveness of clearing in the Union.

Providing the conditions for clearing members and clients to want to clear with EU CCPs is possibly the single, most effective and most sustainable way to increase clearing in the EU and reduce the reliance on TC-CCPs.

The Rapporteur therefore proposes several amendments that go in this direction and beyond the Commission proposal. In particular, the Rapporteur proposes that the "non-objection procedure" proposed by the Commission is further streamlined, by introducing a new category of 'business-as-usual' changes, for which no specific approval process, other than the assessment by ESMA and the college as part of the annual review, should be necessary. At the same time, the amendments seek to provide legal certainty in Level 1 with respect to what type of procedure is needed for regulatory approval, and in particular on the exact cases when a change should be considered significant or non-significant, and therefore whether the non-objection procedure applies or not. The amendments also seek to introduce greater clarity on the margin models applied by CCPs and more transparency on the cost consideration for clients when they are presented with the choice of where to clear. These two measures should allow for better decision-making by clients and for better liquidity planning for clearing members.

With respect to the measures to increase the demand for clearing services in Europe in



connection to the objective of reducing dependencies on third-country CCPs, the Rapporteur believes that the introduction of the ‘Active Account Requirement’ (AAR) should be gradually phased-in, given the novelty of the requirement and its potential impact on the competitiveness of EU clearing members and clients. In the first phase, EU counterparties should be required to exchange initial and variation margins in an account at a CCP established in the Union, and to regularly enter into new positions on that same account. Such material requirements will ensure the effectiveness of the AAR in its first phase, without the necessity to subject EU counterparties to a quantitative threshold. A materially active account will represent a credible requirement particularly for those counterparties that are not internationally active or whose portfolios are mostly composed of euro-denominated products.

At the same time, it is necessary to ensure that the calibration of the level of the clearing activity to be maintained in accounts at EU CCPs can be adapted to changing circumstances, and can be adjusted in light of the effectiveness, or lack thereof, of the introduction of the requirement. Following the introduction of the AAR as described above, ESMA and the Joint Monitoring Mechanism should assess whether that requirement was sufficient to achieve its purported objectives, namely to mitigate, or be, in the absence of further measures, likely to mitigate, the financial stability risks associated with excessive reliance on TC CCPs. It is important that, alongside the financial stability considerations, the competitiveness of Union clearing members and clients is also considered. Where that assessment leads to the conclusion that further measures are necessary, the second phase for the AAR should lead to the development of ESMA RTS specifying the proportion of substantially systemic clearing services to be maintained in the active accounts in EU CCPs.

The phased approach will allow ESMA to collect the necessary data to assess the costs and benefits of the AAR and to measure the impact of its implementation in the relocation of clearing activities and in the competitiveness of EU market participants. At the same time, the first phase will also provide enough time for the supply-side and supervisory measures to start having an effect, which could lead to more clearing moving to EU CCPs (regardless of the AAR).

The Rapporteur believes that the proposed approach introduces enough flexibility in the framework, while addressing the inherent tension between the political goal of reducing the reliance on third country’s CCPs with market arguments about the competitiveness of EU firms. An AAR that is gradually introduced and modulated should balance EU actors' international

competitiveness with the goal of achieving financial stability and increasing clearing volumes in the EU, and avoid a logic of divergence and location-based policies.

### **Supervisory framework**

The current approach of decentralised supervision is no longer suitable to address the increasing cross-border exposures cleared at EU CCPs and in light of the systemic interconnectedness that central clearing creates between CCPs, clearing members and clients. A more coordinated and integrated approach to the supervision of EU CCPs appears necessary, especially as more systemic activity is expected to shift towards the Union via the requirement to hold active accounts at EU CCPs for substantially systemic services.

More centralised supervision would further strengthen EU wide risk monitoring and ensure a level playing field in the EU Single Market. It would reduce occurrences of divergent interpretations of EMIR, increase efficiencies, and ensure that risks concentrated in EU CCPs are adequately monitored and managed, minimising systemic risk and spill-over effects across Member States.

ESMA should be empowered with a direct supervisory role vis-a-vis EU CCPs. This requires adapting the existing supervisory framework under EMIR by providing ESMA with decision-making powers over EU CCPs. This set-up would allow ESMA to take a proactive approach on EU financial stability risks and achieve efficient supervision that takes into account the cross-border issues.

Under this approach, all supervisory decisions pertaining to Articles 7-8, 14-17b, 20-21, 24 and Titles IV-V under EMIR would be drafted and adopted by ESMA, having taken into account the opinion of the college. The change in the approach should also cover the annual reviews, which are an essential milestone in the supervisory life-cycle of the CCP, and should therefore be conducted by ESMA and the college.

The amendments to the Commission proposal also remove the Joint Supervisory Teams established under Article 23b. The objective for the creation of the JSTs - to enhance the involvement of college members in the process of ongoing supervision of EU CCPs - should not lead to the establishment of a new supervisory body, as this may lead to greater institutional complexity. Instead, the envisaged tasks of the JSTs should be given to the college in the context of 'joint supervisory activities', coordinated by ESMA.

These changes to the supervisory system, together with the introduction of the Joint Monitoring

Mechanism, will lead to a system that is clear, understandable, and where fragmentation of divergence is minimised, without losing the role of national authorities, as members of the college, in the day-to-day supervision of EU CCPs.