
**EACH Response to the OECD consultation
“Pillar One – Amount A: Regulated
Financial Services Exclusion”**

May 2022

Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 18 members from 14 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the OECD consultation document "Pillar One – Amount A: Regulated Financial Services Exclusion" (hereinafter called "The consultation").

Introduction

EACH would respectfully suggest **including Markets Infrastructures**, in particular **central counterparties (CCPs)**, **Central Securities Depositories (CSDs)** and **Trading Venues** to the **list of Regulated Financial Institutions**. As a general comment, the associations believe that it is important to ensure a level playing field across the financial sector as a whole. We would suggest that a **definition of Regulated Financial Institution limited to only certain types of entities**¹ is bound to **create competitive distortions across the sector**, without sufficient justification for the rest of the sector to be included in the scope of the new taxing right based on the type of activities carried out.

The current OECD definitions of Regulated Financial Services (Depository Institutions, Mortgage Institutions, Investment Institutions, Insurance Institutions, Asset Managers, Mixed Financial Institutions; and RFI Service Entities) does not seem to recognise Trading Venues, CCPs, and CSDs. Comparably with other financial institutions, these entities are heavily regulated under EU and national laws as they need to hold a licence and are subject to risk-based capital adequacy requirements. We understand that it is not the intention of the OECD to exclude market infrastructure entities since this would create an unlevel playing field with other financial institutions operating similar activities.

More specifically, a **definition of CCP** can be found both in paragraphs 1.8, 1.9 and 1.13 of the CPMI-IOSCO Principles for financial market infrastructures², according to which a CCP "*interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts*". CCPs significantly **reduce risks to markets participants** (generally banks) through the multilateral netting of trades and by imposing robust – and, in Europe, **heavily regulated – risk management procedures**. CCPs indeed require participants to provide collateral (in the form of initial margin and other financial resources) to cover current and potential future exposures, and may mutualise certain risks through devices such

¹ Depository Institution; Mortgage Institution; Investment Institution; Insurance Institution; Asset Manager; a Mixed Financial Institution; and RFI Service Entity

² <https://www.bis.org/cpmi/publ/d101a.pdf>

as default funds. The main goal of the CCP is therefore that of reducing risks not only to market participants, but they can also **reduce systemic risk in the markets they serve**.

Paragraph 1.11 of the CPMI-IOSCO Principles for financial market infrastructures **defines a CSD** as an entity that “*provides securities accounts, central safekeeping services, and asset services, which may include the administration of corporate actions and redemptions, and plays an important role in helping to ensure the integrity of securities issues (that is, ensure that securities are not accidentally or fraudulently created or destroyed or their details changed)*”. A CSD can hold securities either in physical form (but immobilised) or in dematerialised form (that is, they exist only as electronic records). The precise activities of a CSD vary based on jurisdiction and market practices (e.g. the activities of a CSD may vary depending on whether it operates in a jurisdiction with a direct or indirect holding arrangement or a combination of both).

Finally, a **trading venue** contribute to financial stability and economic growth by performing three main functions:

- Funding — allowing companies to raise capital by listing on public markets;
- Trading and price formation — providing investors with the possibility to buy and sell financial instruments in a transparent marketplace by offering price formation;
- Risk management — giving companies and investors access to risk management products, such as derivatives cleared in a clearing house.

EACH proposals

It is our opinion that Market Infrastructures satisfy the three elements indicated in the consultation document of **licensing requirement, regulatory capital requirement, and activities requirement**.

Concretely, **EACH believes that the best option would be to create a dedicated definition of Market Infrastructures in Schedule G, as follows:**

Table 1: EACH best option

Consultation text	EACH proposal
Schedule G – Regulated Financial Services Exclusion	Schedule G – Regulated Financial Services Exclusion
19. “Regulated Financial Institution” means a Depositary Institution; Mortgage Institution; Investment Institution; Insurance Institution; Asset Manager; a Mixed Financial Institution; and an RFI Service Entity.	19. “Regulated Financial Institution” means a Depositary Institution; Mortgage Institution; Investment Institution; Insurance Institution; Asset Manager; a Mixed Financial Institution; and an RFI Service Entity; and a Market Infrastructure.
[...]	[...]

	<p>27. Market Infrastructure means a group entity that:</p> <ul style="list-style-type: none"> a. That is a Central Counterparty as defined in the, CPMI-IOSCO Principles for financial market infrastructures, a Central Security Depository as defined in the, CPMI-IOSCO Principles for financial market infrastructures, or a trading venue defined as an exchange or other multilateral trading facilities. b. That is licensed to carry on the activities listed in paragraph (c) under the laws or regulations of the jurisdiction in which the Group Entity does that business or, in the case of a Group Entity that does such business in a European Economic Area (EEA) Member State, is licensed by a competent authority to carry on such business in an EEA Member State; and c. That is subject to legal requirements to hold a minimum level of capital; d. For which the total gross income attributable to clearing activities, trading activities, settling activities equals or exceeds [75] per cent of the Group Entity’s total gross income during the Period.
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As an alternative **second-best option**, EACH would also support amending the definition of “Investment Institution” to make a reference to **clearing and settling activities**, while **amending footnote 15 to explicitly mention TVs, CCPs, and CSDs**. Please see the suggested modifications in the table below.

Table 2: EACH second best option

Consultation text	EACH proposal
<p>22. “Investment Institution” means a Group Entity:</p> <ul style="list-style-type: none"> a. (...) b. (...) c. For which the total gross income attributable to one or more of the following activities equals or exceeds 	<p>22. “Investment Institution” means a Group Entity:</p> <ul style="list-style-type: none"> d. (...) e. (...) f. For which the total gross income attributable to one or more of the following activities equals or exceeds

<p>[75] per cent of the Group Entity's total gross income during the Period:</p> <ul style="list-style-type: none"> i. dealing, broking or trading in Financial Assets for own account or for account of customers; and / or ii. holding securities in inventory; and / or iii. hedging customer transactions; and / or iv. participating in underwriting, mergers and acquisitions, syndication, securitisation and securities issues and providing financial services related to such activities; 16 and / or v. holding, transferring, controlling, administering or distributing Financial Assets for the account of other persons; 	<p>[75] per cent of the Group Entity's total gross income during the Period:</p> <ul style="list-style-type: none"> vi. dealing, broking, or trading, clearing or settling in Financial Assets for own account or for account of customers; and / or vii. holding securities in inventory; and / or viii. hedging customer transactions; and / or ix. participating in underwriting, mergers and acquisitions, syndication, securitisation and securities issues and providing financial services related to such activities; 16 and / or holding, transferring, controlling, administering or distributing Financial Assets for the account of other persons;
<p>Footnote 15</p> <p>The Commentary would explain that this is a generic term, intended to capture what may be called a custodial institution, investment bank, investment firm, or broker / dealer.</p>	<p>Footnote 15</p> <p>The Commentary would explain that this is a generic term, intended to capture what may be called a custodial institution, investment bank, investment firm, or broker / dealer, trading venue defined as an exchange or other multilateral trading facilities, CCPs and CSDs as defined by CPMI-IOSCO in the Principles for Financial Market Infrastructures (PFMIs).</p>

As the European Association of CCP Clearing Houses, we would like to **focus our feedback** on the reasons why we believe that **CCPs should be included in the definition of Regulated Financial Institution**. For what concerns CSDs and Trading Tenues, we would kindly invite the OECD to refer to the relevant individual Associations' responses.

Why should CCPs be included in the definition of Regulated Financial Institution?

As mentioned above, CCPs meet the licensing requirement, regulatory capital requirement, and activities requirement indicated in the consultation document.

Licensing requirement

Paragraph 4.1.3 of the CPMI-IOSCO Principles for financial market infrastructures specifies that *"FMIs that have been identified using these criteria should be regulated, supervised, and overseen by a central bank, market regulator, or other relevant authority. [...] For example, one or more authorities may have regulatory, supervisory, or oversight responsibility for an FMI registered, chartered, licensed, or designated as an entity that falls within a specific legislative mandate."* In **Europe**, the procedures for the **authorisation of a European CCP** are strictly **regulated via the EMIR Legislation**³, specifically in **Articles 14 to 21**. More, in detail, such Articles define the following:

- Article 14 – Conditions and procedures for the authorisation of a CCP
- Article 15 – Extension of activities and services
- Article 16 – Capital requirements
- Article 17 – Procedure for granting and refusing authorisation
- Article 18 – College
- Article 19 – Opinion of the college
- Article 20 – Withdrawal of the authorisation
- Article 21 – Review and evaluation

A legal person established in the EU that intends to provide clearing services as a CCP has to **submit an application for authorisation to the national competent authority (NCA)** of the Member State where it is established which, in turns, immediately transmits all the information received from the applicant CCP to European Securities and Markets Authority (ESMA) and the college⁴. Such authorisation is granted **only upon unanimity of the members of the college** and **only for activities linked to clearing** and specifies the **services or activities which the CCP is authorised to provide** or perform including the classes of financial instruments covered by such authorisation. Furthermore, should the CCP wish to **extend its business** to additional services or activities not covered by the initial authorisation, a **specific request** must be submitted to the NCA.

In addition, the EMIR Legislation also regulates the **supervision of CCPs**, via Article 22.

Regulatory capital requirement

European CCPs are subject, via Article 16 of EMIR, to have a **permanent and available initial capital of at least EUR 7,5 million**. Further detail concerning the capital requirements for CCPs (e.g. Capital requirements for winding down or restructuring, for operational and legal risk, etc.) can be found in the **Commission Delegated Regulation (EU) No 152/2013**⁵

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN>

⁴ The college is composed by ESMA; the CCP's NCA; the competent authorities responsible for the supervision of the clearing members of the CCP; the competent authorities responsible for the supervision of trading venues served by the CCP; the competent authorities supervising CCPs with which interoperability arrangements have been established; the competent authorities supervising CSDs to which the CCP is linked; the relevant members of the ESCB responsible for the oversight of the CCP and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established; the central banks of issue of the most relevant Union currencies of the financial instruments cleared.

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0152&from=EN>

Activities requirement

As indicated in our proposal, we would suggest that, for what concerns the activities requirements, the definition is in line with those of the other Regulated Financial Institutions, i.e. that CCPs, CSDs and Trading Venues are Market Infrastructures for which the **total gross income attributable to clearing activities, trading activities, settling activities equals or exceeds [75] per cent** of the Group Entity's total gross income during the Period.

In light of this explanation, EACH understands that including CCPs in the definition of Regulated Financial Services Institutions is in line with the OECD's intention of including into such definition those entities satisfying the three requirements of licensing, capital and activities.