
EACH response to the ESMA Consultation Paper “Regulatory technical standards on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR”

November 2020

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 19 Members from 15 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 ESMA consultation paper 'Regulatory technical standards on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR'¹.

While in the rest of this document we include responses to the specific questions listed in the consultation document, we would like to stress the following concerns we have with the proposed approach which are common to both Article 15 and Article 49:

- **Complexity of the proposed approach** – While we appreciate the efforts made by ESMA to achieve a flexible and pragmatic approach, we believe that the proposed process would not improve the existing one and would unfortunately increase complexity and duration of the process to approve the extension of products and services and changes to risk models.

The establishment of every new regulatory process also means the need to develop new governance procedures to support its efficient execution, including but not limited to, controls, oversight, resolution mechanisms, etc. Such additions lead to increased complexity and longer timelines. If the model governance framework becomes too hierarchical and complex due to an increased involvement of authorities in a way that mixes responsibility and accountability, undesirable consequences may emerge. For instance, while model risk can be limited under restrictive governance arrangements, other risks such as market and liquidity risk may become prominent given the slow reaction of CCPs to evolving market conditions.

- **Structure of incentives** – The elongated and complex model governance procedures suggested by the draft ESMA RTS may increase the contradictory outcomes to those initially intended that we are already experiencing in some cases. The cost-benefit assessment of maintaining the modelling framework at the state-of-the-art, and keeping parameters up-to-date for prevailing market conditions, are not so simple any more. And because these governance procedures are not homogeneous across different jurisdictions, relevant regulatory trade-offs are starting to emerge, worsening the structure of incentives faced by CCPs.

¹ https://www.esma.europa.eu/sites/default/files/library/esma70-151-3023_cp_article_15_and_49_emir_0.pdf

- **Accountability Vs. Responsibility** - EACH notes and appreciates the accountability of ESMA and the relevant colleges when it comes to CCP supervision, however at the same time it can be argued that the steps proposed in this consultation represent a move by authorities from accountability to responsibility.

The argument is not that CCPs should be exempt from the model risk governance performed by regulators. On the contrary, CCPs are risk managers by nature, and the quality of the modelling used on those activities goes hand-to-hand with the governance supporting it. However, accountability and responsibility should not be confused. CCPs are responsible for the day-to-day management of their models, and the suggested text by the DRAFT ESMA RTS seems to preclude the execution of such role. Regulators, complementarily, have the important role of overseeing those practices, using legislation to establish the boundaries of appropriate action. But if constraints are so narrow and time-consuming to navigate that the allocation of responsibility becomes unclear, then there is a problem.

- **Allocation of responsibility and level playing field** - EACH observes that the proposal transfers responsibilities from the National Competent Authorities (NCAs) to ESMA (and respective colleges). CCPs deal on a daily basis with their own NCAs, which are familiar with the business and operations of the CCPs. Such transference of responsibility could imply that the level of context and information is reduced during the decision-taking process. Furthermore, an additional consultation with the college would mean that criteria are not clear enough and are subject to additional, potentially subjective assessment and discretion of colleges, which might lead to unlevel playing field between CCPs and the governing processes applied due to potentially not always consistent decisions and unified practices.
- **Decrease of possibilities for risk management** – We believe that the proposed approach unnecessarily increases 'time-to-market' of new risk products, services and changes to risk models as more stakeholders are involved without a particular governance and, very importantly, without any defined timing. This means that when a CCP proposes a new product to be brought to the market, the proposed approach could significantly (or even in some extreme cases indefinitely) postpone its approval, potentially leading to a fading of the momentum of demand or, where increasing risk protections, in a delay of being able to increase CCP resilience. This would have the unfortunate and paradoxical consequence of decreasing, rather than increasing the possibilities to enhance risk management at CCPs and therefore inhibiting the offering and quality of risk management products to the market.
- **Governance of the proposed approach** - EACH notes that the consultation paper does not include any governance to operate the new processes. For instance, there is no definition of the new timeline for the process of determining whether an extension of activities or services is subject to Article 15 and whether a change to the models and parameters is significant in line with Article 49. We believe that in line with the EMIR

provisions, a specific and efficient timeline must be developed and most importantly enforced. Limiting the amount of time necessary for launching new services is key to spur innovation and competition within the EU, but also on global markets where EU CCPs enter into competition with CCPs from other jurisdictions which may benefit from faster processes. Moreover, a failure to do this could result in CCPs not being able to offer increased risk management possibilities in due course.

Against the above, EACH supports the exclusion of the indicators for both Article 15 and Article 49, and the redefinition of some of the proposed criteria to make it clear, direct, and objective. Under such terms, there would be no need to consult the college, avoiding any of the issues highlighted above.

We also suggest waiving the ESMA Opinion of 15th November 2016² once the final RTS on Article 15 and 49 come into force. This would provide the legal certainty needed by market participants to comply with one consistent set of provisions, rather than two potentially conflicting ones.

² https://www.esma.europa.eu/sites/default/files/library/2016-1574_-_opinion_on_significant_changes_for_ccps.pdf

Section 4 – Extension of activities and services by CCP

Q1: Do you agree with ESMA's proposed approach to divide conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation (under Article 15 of EMIR) into criteria, which would be subject to a more simplified college consultation procedure, and into indicators, which would be subject to a more extensive college consultation procedure, or would you propose a different approach? Please provide reasons for your answer.

EACH disagreement with suggested approach

We respectfully disagree with the proposed approach to divide conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation (under Article 15 of EMIR) into criteria, which would be subject to a more simplified college consultation procedure, and into indicators, which would be subject to a more extensive college consultation procedure.

Reasons for disagreement

We have described several reasons for our disagreement to the proposed approach for both Articles 15 and 49 in the section 'Introduction' (See above). Those reasons are in summary: complexity of proposed approach; structure of incentives; move from accountability to responsibility; allocation of responsibilities and level-playing field; decreased possibility for risk management opportunities; lack of governance of the proposed approach. Please refer to the section 'Introduction' for the details of those reasons.

In addition to those, there are some reasons for our disagreement with the proposed approach which are specific to the approach suggested for Article 15:

- **Lack of the so much needed certainty for CCPs in their planning and running the business-as-usual activities** – The CCPs and NCAs should be provided with clear criteria as to when Article 15 is applicable. The criteria should be defined in such a way that it is rather obvious for CCPs and NCAs whether a given situation requires acting under Article 15 (or Article 49). Otherwise, the planning process in the CCP and the implementation of some new or modified solutions is almost impossible because the CCP is not able to ex-ante determine which procedure it will be subject to, how much time it will take, etc.

Criteria need to reflect material changes to the nature of the service currently offered by the CCP to justify a request for an extension of its existing authorisation. They should not be too descriptive in nature and where those changes do not lead to incremental changes in the CCP's existing service offering they should not trigger the need for an Article 15. Alternatively, this process could disincentivize (if not hamper) innovation in the clearing industry

- **Lack of information as to the kind of material the NCA's initial assessment and then the college's decision should be based on.** In the case of a regular application

for authorisation or its extension, formal and full documentation is submitted by the CCP to the NCA which is then subject to the NCA's assessment of whether it is complete or not. In such a case, the NCA and the college can make further analysis and decisions based on full material. In light of ESMA's current proposal, we are talking about some pre-initial stage where the CCP does not know what the final outcome of the decision-making process will be and therefore which procedure it should be preparing for. In the RTS, there is only a reference to "a detailed description of the initiative" but it is very difficult to judge what it means exactly. If we are not in a formal process and the decision is based on some "description" only, it might be difficult for the authorities to be able to make an informed decision.

Alternative approach proposed by EACH

We suggest as an alternative to reduce the list of criteria (See our responses to Questions 2 and 3) and delete the indicators to have a clear and simple process. If the NCA deems the narrow criteria to be met, Article 15 could directly be launched and there would be no need to consult the college on whether the process should be launched or not.

The list of criteria should be clear enough for CCPs and their NCAs to be able to make a straight-forward decision without any doubt as to which article shall apply in a given situation and, only in some unforeseen, exceptionally complicated and unusual circumstances which can give rise to some doubts on the part of the CCP and the NCA, there should be a quick and easy path for a consultation with colleges with a leading role of ESMA as a centralised organ for answering and collecting all such potential questions.

The process for the extension of authorisation from the notification to the NCA to final approval including the college's opinion should be limited to three months.

Q2: Do you agree with ESMA's proposed list of criteria for an extension of authorisation (under Article 15 of EMIR) or would you propose to change/add/delete any of the criteria or specify certain criteria further? Please provide reasons for your answer.

Yes, we generally agree with the list of criteria for an extension of authorisation (under Article 15 of EMIR). We would however propose the following changes to them:

- **Exclusion of new contracts to existing market class or new market data** – Adding a new contract to an existing market class or new market data should not constitute a service change and therefore we believe that it is important to focus on the nature of the service provided rather than the product itself.
- **Exclusion of commodity derivatives (Paragraph 10(a)(vii) or Article 2(a))** – We do not believe that commodity derivatives should be included in the list of instruments that would trigger an Article 15 requirement. New contracts in the commodity derivatives space appear quite frequently and are often variants on existing contracts for tailored use; Applying Article 15 would result in a an overly burdensome and lengthy regulatory approval process to both NCAs and CCPs.

- **Paragraph 10(c) (Article 2(c))** – We do not believe that this criterion would require an extension of authorization and therefore suggest deleting it. The provision of additional settlement or payment options will not change the service or risk model of a CCP. Regulatory requirements to add additional settlement and/or payment locations would remain the same no matter the number of settlement locations offered.
- **Paragraph 10(d) (Article 2(d))** - CCPs clearing FX products would have to go through an authorization process for each new pair of currencies they clear, which does not bring material new risk to the CCP and is impractical. Given representation of central banks of issue (CBIs) on colleges, one other option would be to trigger the extension of authorization only for Union currencies. We would therefore suggest deleting this criterion.
- **Paragraph 13(b) (Article 3(b))** – We believe that the suggested indicators under paragraph 13(b) should be criteria rather than indicators, with the following exception:
- **Paragraph 13(b)(i)(ii) (Article 3(b)(i)(ii))** – Neither the extension of existing service to different time zones nor the extension of working hours would fundamentally change the service. We would therefore suggest deleting this indicator.
- **Paragraph 13(d) (Article 3(d))** – Again we believe that assuming the process for obtaining prices remains the same, this indicator would not constitute material change to a CCP's risk model. Also, we view such a change as falling under Article 49 instead.

Q3: Do you agree with ESMA's proposed list of indicators for an extension of authorisation (under Article 15 of EMIR) or would you propose to change/add/delete any of the indicators or specify certain indicators further? Please provide reasons for your answer.

No, as indicated in our response to Question 1, we do not agree with ESMA's proposed list of indicators for an extension of authorisation (under Article 15 of EMIR). We would therefore suggest removing all of them and applying the alternative approach proposed in our response to Question 1.

If the indicators were to be maintained, we also note that some of the proposed ones are from our point of view indicators that rather refer to Article 49 than to 15. This is the case for example of:

- **Paragraph 13 (Article 3)**- All subpoints from paragraph 13 except for 13(b) with a few exceptions as described in our response to Question 2 (which we believe should be a criterion under Article 15, rather than an indicator) and 13(e)(i) which we believe should be deleted (See below) should be subject to Article 49 proceedings rather than Article 15 (i.e. subpoints a, c, d, e, f).
- **Paragraph 13(e)(i) (Article 3(e)(i))** - 'The extension of the range of maturities, by 50% or more of the longest maturity' – We believe this should not be treated as an extension of authorisation as it is still the same type of instruments and there is no change to routines or processes. In case the extension of maturity will lead to less liquid instruments being cleared, this would potentially be properly reflected in parameters (MPOR scorecard, for example, and potentially higher concentration addons). That is,

the change is within the current framework. We therefore believe this criterion should be deleted.

Q4: Would you change certain criteria into indicators or vice-versa (under Article 15 of EMIR)? Please provide reasons for your answer.

No, we would not change any criteria into indicators because as mentioned, we do not believe that indicators are needed.

Q5: Do you agree with ESMA's proposed procedures for consulting the college (under Article 15 of EMIR) or would you propose different procedures? Please provide reasons for your answer.

No. Please see our response to Question 1.

We also believe interaction with NCAs during the application assessment can sometimes take up to several months. During this time, there are often several individual requests for additional documents to be submitted or review of information already submitted which leads to significant delays in the application assessment. We would therefore urge ESMA to further clarify what should be included in the application assessment in order to improve turnaround time of the entire authorisation process.

Section 5 – Changes to models and parameters by CCP

Q6: Do you agree with ESMA's proposed approach to divide conditions under which changes to the models and parameters are significant into criteria, which would be subject to a more simplified college consultation procedure, and indicators, which would be subject to a more extensive college consultation procedure, or would you propose a different approach? Please provide reasons for your answer.

EACH disagreement with suggested approach

As indicated in our response to Question 1 regarding additional services or activities, we respectfully disagree with the proposed approach to divide conditions under which changes to the models and parameters are significant into criteria, which would be subject to a more simplified college consultation procedure, and into indicators, which would be subject to a more extensive college consultation procedure.

Reasons for disagreement

We have described several reasons for our disagreement to the proposed approach for both Articles 15 and 49 in the section 'Introduction' (See above). Those reasons are in summary: complexity of proposed approach; structure of incentives; move from accountability to responsibility; allocation of responsibilities and level-playing field; decreased possibility for risk management opportunities; lack of governance of the proposed approach. Please refer to the section 'Introduction' for the details of those reasons.

Alternative approach proposed by EACH

As proposed in our response to Question 1, we suggest as an alternative to reduce the list of criteria to new models and delete the indicators to have a clear and simple process. If the NCA deems the narrow criteria to be met, Article 49 could directly be launched and there would be no need to consult the college on whether the process should be launched or not.

The list of criteria should be clear enough for CCPs and their NCAs to be able to make a straight-forward decision without any doubt as to which article shall apply in a given situation and only in some unforeseen, exceptionally complicated and unusual circumstances which can give rise to some doubts on the part of the CCP and the NCA, there should be a quick and easy path for a consultation with colleges with a leading role of ESMA as a centralised organ for answering and collecting all such potential questions.

We suggest that the process to define whether a change to a risk model and parameter is significant, from the date when the CCP provides the application until the time when the decision is taken as to whether the change is significant, should not last more than 30 days.

In applying this alternative approach, we suggest the following changes not being considered significant:

- **Model inputs** - Model inputs have a different governance processes than those applied to models, and as such should not be classified as significant when they change. **In paragraph 26(d)(v)** (Article 8(d)) ESMA suggests that data used as input to risk models, operational or organizational developments linked to the change should be considered as significant risk models. EACH highlights that inputs are an important part of the functioning and use of models: Inputs vary per type of model and are typically related to data on financial contracts (e.g. price, volatility, returns, etc.). For instance, in option pricing models the volatility is a key input. Similarly, in default fund models or stress testing, extreme but plausible scenarios deliver the necessary input for sizing, allocation and review. Notably, however, inputs expand beyond price-related information. For example, the economic sector classification of the underlying assets of a contract can be an input for wrong-way risk and cross-margining models. In either case, model inputs have different governance processes than those applied to models, and as such should not be classified as significant when they change.
- **Alternations to model outputs** - Alterations to model outputs should not be considered as indicators for a significant model change, as they are the materialization of the input transformation performed by models.
- **Changes that make the model conservative beyond EMIR legislation** - In the cases where a change to a model or parameter leads to making the model more conservative, rather than less, as compared to the standards in the EMIR legislation, a process for significant change should not be triggered, as the model will by definition be more robust than in its previous form.
- **Business as usual ('BAU') changes to models and parameters** – BAU changes to models and parameters should not be considered significant. If these would have been

deemed significant during the COVID-19 market stress, CCPs would have been unable to adapt to such stress in due course and perform robustly as they did. We suggest as an alternative that emergency BAU changes are only analysed in detail after its implementation:

- **Article 7(a)** – regarding the proposed decrease/increase of the total pre-funded resources greater than +/- 10%, we observe that the materiality of the proposed threshold is actually very low and could be triggered during the CCP risk management activity, currently qualified as BAU. This activity should not, in our opinion be considered a significant change to the model, as it is already included in the relevant CCP governance arrangements. Moreover, it should be considered that in periods of market stress the CCP should retain the ability to address the necessary changes to model parameters promptly.
- **Article 6(j)** – we note that, such requirements can result in the inability of CCPs to make key decisions relating to its risk models thereby limiting their powers and therefore they should also be considered as business as usual.
- **Changes that do not have a material effect on the overall CCP risk profiles (Article 7(g))** – Changes should be material in relation to their impact on the overall margin modules (e.g. an increase of a Clearing Member's contribution to the Default Fund from EUR 0.5 million to EUR 0.8 million, within a Default Fund size of EUR 200 million, would be a very negligible change that should not trigger an Article 49, even though it may represent more than a 50% variation of the default fund contribution of that Clearing Member).

In a similar vein to the above, the impact on margin requirements referred to under Article 7(e) should be evaluated on the level of asset class instead of the level of clearing member.

The need to promptly change the parameters may also be driven by back test results and procyclicality analysis. In both cases, we deem that the CCP should retain the ability to promptly amend risk parameters, at least for risk mitigation and anti-procyclicality reasons.

- **Changes that do not lead to a different level of credit risk (Article 7(i))** – We believe that an Article 49 requirement should only be triggered if the new issuer introduces a different level of credit risk. If the level of credit risk is not changed then we would consider such changes business as usual

We also suggest that new guidance on significant model changes should be targeted at the processing kernel of models, as changes to the specification and implementation of model kernels could have a significant impact in the levels of model risk

Q7: Do you agree with ESMA's proposed list of criteria for significant changes to the models and parameters (under Article 49 of EMIR) or would you propose to change/add/delete any of the criteria or specify certain criteria further? Please provide reasons for your answer.

EACH comments on the suggested approach

Yes, we generally agree with the list of criteria for significant changes to the models and parameters (under Article 49 of EMIR). In addition to the points highlighted in Question 6, we would however propose the following changes to criteria approach suggested in the consultation:

- **Paragraph 23 (Article 6)** - We disagree with the need to run the criteria for at least six months in a roll. As an alternative we suggest using at least three data points in different dates of the past year.
- **Paragraph 24(d) (Article 7(d))** should only be applicable for margin decreases (and not applicable to increases) in the case of the confidence level and the margin period of risk, but not in the case of the lookback period, as in this case the impact on the model from the choice of this parameter is more diverse (e.g. an extension of the lookback period can both increase or decrease margins depending on the market volatility represented in the extra scenarios added to the lookback period).
- **Paragraph 24(g) (Article 7(g))** should be viewed as an input rather than a model change and should therefore not trigger a significant change under Article 49. We would therefore suggest deleting it.
- **Paragraph 13 (Article 3)** - All subpoints from paragraph 13 except for 13(b) (which we believe should be a criterion under Article 15, rather than an indicator) and 13(e)(i) which we believe should be deleted (See our response to Question 3) should be subject to Article 49 proceedings rather than Article 15 (i.e. subpoints a, c, d, e, f).

Q8: Do you agree with ESMA's proposed list of indicators for significant changes to the models and parameters (under Article 49 of EMIR) or would you propose to change/add/delete any of the indicators or specify certain indicators further? Please provide reasons for your answer.

No, as indicated in our response to Question 6, we do not agree with ESMA's proposed list of indicators for significant changes to the models and parameters (under Article 49 of EMIR). We would therefore suggest removing all of them and applying the alternative approach described in our response to Question 6.

In addition to the points highlighted in our response to Question 6, if these indicators were to be maintained, we would also like to make the following comments on concrete paragraphs of the consultation:

- **Materiality threshold** – We are concerned about the low materiality thresholds suggested in the consultation paper as they would effectively lead to a constant but unnecessary trigger of Article 49. This would be the case for example in the event of default fund adjustments higher than 5% which regularly happen on a monthly basis at CCPs.

- **Paragraph 26(a)(iii) (Article 8(a)(iii))** – The text seems to refer to both individual underlyings and class of financial instruments. We would like to clarify which one of the two it refers to.
- **Paragraph 26(d)(iii) to (v) (Article 8(d)(iii) to (v))** – We believe these sub-paragraphs refer to parameters supporting the model but not to the model *per se* and should therefore not be considered significant changes.
- **Paragraph 26(d) (Article 8 (d))** – We would consider the consequences that this indicator can have on the rate of adoption of key changes, some of which are currently perceived as BAU, to ensure resiliency of financial markets and enable a CCP to fulfil its role in safeguarding financial stability. We note that incremental changes to the method used for example to calibrate risk models parameters can take up to 1-2 months which under extreme market conditions is not acceptable.

Instead, we would suggest including quantitative thresholds such as the 5% threshold widely used throughout Article 49 upon which NCAs would be able to determine whether an Article 49 would kick in. CCPs must be in a position to move quickly to respond to market events and be able to make autonomous decisions for the benefit of financial stability. Furthermore, changes linked to operational or organisational developments would not necessarily have an impact on risk and we do not believe that these are appropriate in this context therefore we would suggest removing.

- **Paragraph 26(e) (Article 8(e))**
 - We do not agree that this type of adjustments should be subject to Article 49. Changes as a result of a CCP's actions to calibrate default fund exposures, collateral haircut, liquidity risk, credit and counterparty risk are important decisions that a CCP must be in a position to make as a response to a broader market event to ensure financial stability in the market and those actions must be taken in a timely manner. We believe that this indicator should be removed in its entirety;
 - Furthermore, EACH believes that new, modification, or retirement of stress scenarios should not be subject to Article 49 if done according to an approved methodology or stress testing framework. In line with EMIR, CCPs are required to add new scenarios promptly (see RTS Article 51), and triggering a significant change would contravene the original objective of the regulation. However, ESMA proposes that significant changes include changes that imply the development of new stress scenarios, including either historical or hypothetical scenarios or both, or the modification of the calibration or definition of the existing scenarios, for the purpose of determining default fund exposures, collateral haircut, liquidity risk, credit and counterparty risk or operational risk.

Q9: Would you change certain criteria into indicators or vice-versa (under Article 49 of EMIR)? Please provide reasons for your answer.

No, we would not change any criteria into indicator because as mentioned, we do not believe that indicators are needed.

Q10: Do you agree with ESMA's proposal to extend the consultation with the college also to Article 49? Do you agree with the proposed procedures for consulting the college or would you propose different procedures? Please provide reasons for your answer.

No. Please see our response to Question 6.

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