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Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

RECOMMENDATIONS

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2020/1302

of 14 July 2020

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to central counterparties established in third countries

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 25d(3) thereof,

Whereas:

(1) Article 25d of Regulation (EU) No 648/2012 requires that the European Securities and Markets Authority ('ESMA') charge third-country central counterparties ('CCPs') fees associated with applications for recognition under Article 25 of that Regulation and annual fees associated with the performance of its tasks in accordance with that Regulation in relation to recognised third-country CCPs. Article 25d(2) of Regulation (EU) No 648/2012 requires that such fees be proportionate to the turnover of the CCP concerned and cover all costs incurred by ESMA for the recognition and the performance of its tasks in relation to third-country CCP in accordance with that Regulation.

(2) Fees associated with applications for recognition ('recognition fees') should be charged to third-country CCPs to cover ESMA's costs for processing applications for recognition, including costs for verifying that applications are complete, requesting additional information, drafting of decisions and costs relating to the assessment of the systemic importance of third-country CCPs ('tiering'). For CCPs that are systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States and that are recognised by ESMA in accordance with Article 25(2b) of Regulation (EU) No 648/2012 ('Tier 2 CCPs'), additional costs are incurred by ESMA. These additional costs are incurred by ESMA when assessing compliance with the recognition conditions set out in Article 25(2b) of Regulation (EU) No 648/2012 and whether, by complying with the applicable third-country legal framework, a CCP may be deemed to satisfy compliance with the requirements set out in Article 16 and Titles IV and V of Regulation (EU) No 648/2012 ('comparable compliance'). The costs associated with applications made by Tier 2 CCPs will therefore be higher than those associated with applications made by third-country CCPs that are not deemed to be systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States ('Tier 1 CCPs').

(3) While a basic recognition fee should be charged to all third-country CCPs applying for recognition under Article 25 of Regulation (EU) No 648/2012, an additional fee should be charged to Tier 2 CCPs to cover the additional cost incurred by ESMA as part of the application process. The additional recognition fee should also be charged to already recognised CCPs the first time that ESMA determines whether they are to be classified as Tier 2 CCPs following the review of their systemic importance under Article 25(5) or Article 89(3c) of Regulation (EU) No 648/2012.

([1]) OJ L 201, 27.7.2012, p. 1.

(4) Annual fees are also to be charged to recognised third-country CCPs to cover ESMA's costs for the performance of its tasks under Regulation (EU) No 648/2012 in relation to such CCPs. For both Tier 1 and Tier 2 CCPs, those tasks include the periodic review of the systemic importance of CCPs pursuant to Article 25(5) of Regulation (EU) No 648/2012, the implementation and maintenance of cooperation arrangements with third-country authorities and the monitoring of regulatory and supervisory developments in third countries. For Tier 2 CCPs, ESMA is also required to supervise on an ongoing basis compliance by those CCPs with the requirements set out in Article 16 and Titles IV and V of Regulation (EU) No 648/2012, including through comparable compliance, where granted. It is therefore appropriate that different annual fees apply to Tier 1 and Tier 2 CCPs.

(5) The recognition and annual fees laid down in this Regulation should cover the costs that ESMA expects to incur when processing applications for recognition on the basis of its experience in performing tasks in relation to third-country CCPs and other supervised entities as well as on the basis of its expected costs as stated in its annual activity-based budget.

(6) The tasks performed by ESMA under Regulation (EU) No 648/2012 in relation to recognised Tier 1 CCPs will largely be the same for each Tier 1 CCP independently of their size. It is therefore appropriate that the costs incurred by ESMA in relation to recognised Tier 1 CCPs are covered by levying an annual fee of the same amount on each recognised Tier 1 CCP. In relation to recognised Tier 2 CCPs, in order to ensure a fair allocation of fees which, at the same time, reflects the actual administrative effort required by ESMA for the performance of its tasks with respect to each Tier 2 CCP, annual fees should also take account of the turnover of the Tier 2 CCP.

(7) Annual fees charged to third-country CCPs for the first year in which they are recognised pursuant to Article 25 of Regulation (EU) No 648/2012 should be proportionate to the part of that year during which ESMA performs tasks in accordance with that Regulation in relation to those CCPs. The same principle should apply for the year in which a CCP that is recognised as a Tier 1 CCP, is classified for the first time as a Tier 2 CCP pursuant to Article 25(5) of that Regulation.

(8) To ensure the timely funding of the costs incurred by ESMA in relation to applications for recognition made pursuant to Article 25 of Regulation (EU) No 648/2012, recognition fees should be paid to ESMA before the processing of applications for recognition or the assessment of whether Tier 2 CCPs comply with the recognition requirements set out in Article 25(2b) of Regulation (EU) No 648/2012. In order to ensure the timely funding of the costs incurred by ESMA in the performance of its tasks in relation to recognised third-country CCPs, annual fees should be paid in the beginning of the calendar year to which they relate. Annual fees in the first year of recognition should be paid soon after the adoption of recognition decisions.

(9) In order to discourage repeated or unfounded applications, recognition fees should not be reimbursed in the case where an applicant withdraws its application. As the administrative work required in the case of an application for recognition that is refused is the same as that required in the case of an application that is accepted, recognition fees should not be reimbursed if recognition is refused.

(10) Any costs incurred by ESMA after the entry into force of Regulation (EU) 2019/2099 of the European Parliament and of the Council [2] in respect of third-country CCPs that have already been recognised in accordance with Article 25 of Regulation (EU) No 648/2012 prior to 22 September 2020 should be covered by fees. Such third-country CCPs should therefore be required to pay an interim annual fee for 2020 and each subsequent year until the review of their systemic importance pursuant to Article 89(3c) of Regulation (EU) No 648/2012 has been carried out.

(11) This Delegated Regulation should enter into force as a matter of urgency to ensure that ESMA is funded in a timely and appropriate manner following the entry into force of Regulation (EU) 2019/2099,

[2] Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 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 (OJ L 322, 12.12.2019, p. 1).

HAS ADOPTED THIS REGULATION:

CHAPTER I

FEES

Article 1

Recognition fees

1. A CCP established in a third country that applies for recognition in accordance with Article 25 of Regulation (EU) No 648/2012 shall pay a basic recognition fee of EUR 50 000.

2. A CCP established in a third country shall pay an additional recognition fee of EUR 360 000 where ESMA determines that, in accordance with Article 25(2a) of Regulation (EU) No 648/2012, that CCP is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States ('Tier 2 CCP'). A Tier 2 CCP shall pay the additional recognition fee in any of the following cases:

(a) the CCP applies for recognition;

(b) the CCP, where already recognised pursuant to Article 25(2) of Regulation (EU) No 648/2012, is determined to be a Tier 2 CCP following the review carried out by ESMA in accordance with Article 25(5) of that Regulation.

Article 2

Annual fees

1. A recognised CCP shall pay an annual fee.

2. Where a CCP is recognised by ESMA in accordance with Article 25(2) of Regulation (EU) No 648/2012 ('Tier 1 CCP'), the annual fee for each Tier 1 CCP for a given year (n) shall be the total annual fee divided in equal parts between all Tier 1 CCPs recognised on 31 December of the previous year (n-1).

For the purposes of the first subparagraph, the total annual fee for a given year (n) shall be the estimate of expenditure relating to the tasks to be performed by ESMA with regard to all recognised Tier 1 CCPs under Regulation (EU) No 648/2012 as included in ESMA's budget for that year.

3. Where a CCP is recognised by ESMA in accordance with Article 25(2b) of Regulation (EU) No 648/2012 ('Tier 2 CCP'), the annual fee for a given year (n) shall be the total annual fee divided between all Tier 2 CCPs recognised on 31 December of the previous year (n-1) and multiplied by the applicable weight determined pursuant to Article 4 of this Regulation.

For the purposes of the first subparagraph, the total annual fee for a given year (n) shall be the estimate of expenditure relating to the tasks to be performed by ESMA with regard to all recognised Tier 2 CCPs under Regulation (EU) No 648/2012 as included in ESMA's budget for that year.

Article 3

Annual fees in year of recognition

1. For the year in which a third-country CCP is recognised by ESMA in accordance with Article 25 of Regulation (EU) No 648/2012, the annual fee shall be calculated as follows:

(a) where ESMA recognises a CCP as a Tier 1 CCP, the annual fee shall be determined as the proportion of the basic recognition fee laid down in Article 1(1) of this Regulation calculated in accordance with the following ratio:

$$\frac{\textit{Number of calendar days from the date of recognition until } 31 \textit{ December}}{\textit{Number of calendar days in year}}$$

(b) where ESMA recognises a CCP as a Tier 2 CCP, the annual fee shall be determined as the proportion of the additional recognition fee laid down in Article 1(2) of this Regulation calculated in accordance with the following ratio:

$$\frac{\textit{Number of calendar days from the date of recognition until 31 December}}{\textit{Number of calendar days in year}}$$

2. Where a CCP has paid an interim annual fee in accordance with Article 9 for the year in which that CCP is recognised as a Tier 1 CCP, the annual fee calculated in accordance with paragraph 1(a) shall not be charged.

3. Where a CCP has paid an interim annual fee in accordance with Article 9 or an annual fee in accordance with Article 2(2) for the year in which that CCP is recognised as a Tier 2 CCP, the amount of that fee shall be deducted from the fee to be paid in accordance with paragraph 1(b).

Article 4

Applicable turnover for Tier 2 CCPs

1. The relevant turnover of a Tier 2 CCP shall be its worldwide revenues accrued from provision of clearing services (membership fees and clearing fees net of transaction costs) during the CCP's most recent financial year.

Tier 2 CCPs shall provide ESMA, on an annual basis, with audited figures confirming its worldwide revenues accrued from the provision of the clearing services referred to in the first subparagraph. The audited figures shall be submitted to ESMA no later than 30 September each year. The documents containing audited figures shall be provided in a language customary in the sphere of financial services.

If the revenues referred to in the first subparagraph are reported in another currency than euro, ESMA shall convert them into euro using the average euro foreign exchange rate applicable to the period during which the revenues were recorded. For that purpose, the euro foreign exchange reference rate published by the European Central Bank shall be used.

2. On the basis of the turnover determined in accordance with paragraph 1 for a given year (n), the CCP shall be deemed to belong to one of the following groups:

(a) Group 1: annual turnover below EUR 600 million;

(b) Group 2: annual turnover of EUR 600 million or above.

A Tier 2 CCP in Group 1 shall be attributed the turnover weight 1.

A Tier 2 CCP in Group 2 shall be attributed the turnover weight 1,2.

3. The total turnover weight of all recognised Tier 2 CCPs for a given year (n) shall be the sum of the turnover weights determined in accordance with paragraph 2 of all Tier 2 CCPs recognised by ESMA on the 31 December of the previous year (n-1).

4. For the purpose of Article 2(3), the applicable weight of a Tier 2 CCP for a given year (n) shall be its turnover weight determined in accordance with paragraph 2 divided by the total turnover weight of all recognised Tier 2 CCPs determined in accordance with paragraph 3.

CHAPTER II

PAYMENT CONDITIONS

Article 5

General payment modalities

1. All fees shall be paid in euro.

2. Any late payment shall incur the default interest laid down in Article 99 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([3]).

3. Communications between ESMA and third-country CCPs shall take place by electronic means.

Article 6

Payment of recognition fees

1. The basic recognition fee provided for in Article 1(1) of this Regulation shall be paid when the CCP submits its application for recognition.

By way of derogation from the first subparagraph, where the Commission has not adopted an implementing act in accordance with Article 25(6) of Regulation (EU) No 648/2012 for the third country in which the CCP is established when the CCP applies for recognition, the basic recognition fee shall be paid at the latest on the day that such an implementing act enters into force.

2. The date by which the additional recognition fee provided for in Article 1(2) of this Regulation is to be paid shall be set in a debit note sent by ESMA to the CCP following ESMA's request to the CCP to submit additional information for the assessment of the CCP's compliance with the requirements laid down in Article 25(2b) of Regulation (EU) No 648/2012. The payment date shall provide the CCP with at least 30 calendar days to pay, from the day on which ESMA sent the debit note to the CCP.

3. Recognition fees shall not be reimbursed.

Article 7

Payment of annual fees

1. The annual fees provided for in Article 2 for a given year (n) shall be paid at the latest on 31 March of the year (n).

ESMA shall send debit notes to all recognised third-country CCPs specifying the amount of the annual fee at the latest on 1 March of year (n).

2. The amount of the annual fee provided for in Article 3 in the year of recognition as well as the date by which the annual fee is to be paid, shall be stated in a debit note sent by ESMA to the CCP. The payment date shall provide the CCP with at least 30 calendar days to pay, from the day on which ESMA sent the debit note to the CCP.

3. Annual fees paid by a CCP shall not be reimbursed.

CHAPTER III

TRANSITIONAL AND FINAL PROVISIONS

Article 8

Applications for recognition already submitted

1. Where a third-country CCP has submitted an application for recognition before 22 September 2020, and ESMA has not yet adopted a decision to recognise or to refuse recognition of that CCP, the CCP shall pay the recognition fee provided for in Article 1(1) 22 October 2020.

([3]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

2. By way of derogation from paragraph 1, where ESMA has suspended the processing of a third-country CCP's application for recognition before 22 September 2020, the CCP shall pay the recognition fee provided for in Article 1(1) within the payment date stated in the debit note sent by ESMA to the CCP, following the notification that the processing of its application is no longer suspended. The payment date shall provide the CCP with at least 30 calendar days to pay, from the day on which ESMA sent the debit note to the CCP.

Article 9

Interim annual fee for CCPs already recognised

1. A third-country CCP that is recognised by ESMA in accordance with Article 25 of Regulation (EU) No 648/2012 at the time this Regulation enters into force shall pay an interim annual fee of EUR 50 000 for 2020 and each subsequent year until the review of its systemic importance pursuant to Article 89(3c) of Regulation (EU) No 648/2012 has been carried out and it has been recognised in accordance with either Article 25(2) or Article 25(2b) of that Regulation or such recognition has not been granted.

2. The interim annual fee for 2020 shall be paid within 30 calendar days from the entry into force of this Regulation. Interim annual fees for another year (n) shall be paid at the latest on 31 March of the year (n).

Article 10

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 July 2020.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2020/1303

of 14 July 2020

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular the second subparagraph of Article 25(2a) thereof,

Whereas:

(1) When assessing the degree of systemic risk that a third-country CCP presents to the financial stability of the Union or of one or more of its Member States, ESMA should consider a range of objective quantitative and qualitative considerations that justify its decision to recognise a third-country CCP as a Tier 1 or a Tier 2 CCP. It should also take into account any conditions under which the Commission may have adopted its equivalence decision. In particular, when assessing the risk profile of a third-country CCP, ESMA must consider objective and transparent quantitative activity indicators with regard to the business conducted with respect to clearing participants established in the Union or denominated in Union currencies, at the time of the assessment. While ESMA must consider the business conducted by the CCP in a holistic manner, its assessment should reflect the risk that a particular CCP could bring to the financial stability of the Union.

(2) In specifying the criteria that ESMA is to take into account when determining the tier of a third-country CCP, the nature of the transactions cleared by the CCP, including their complexity, risk profile and average maturity, as well as the transparency and liquidity of the markets concerned and the degree to which the CCP's clearing activities are denominated in euro or other Union currencies should be considered. In this regard, specific features concerning certain products, such as agricultural products, listed and executed on regulated markets in third countries, which relate to markets that largely serve domestic non-financial counterparties in that third country who manage their commercial risks through those contracts, may pose a negligible risk to clearing members and trading venues in the Union as they have a low degree of systemic interconnectedness with the rest of the financial system.

(3) The countries where the CCP operates, the extent of the services it provides, the characteristics of the financial instruments it clears as well as the volumes cleared are objective indicators of the complexity of the CCP's business. When taking into account the criterion set out in point (a) of Article 25(2a) of Regulation (EU) No 648/2012, ESMA should therefore consider the ownership, business and corporate structure of the CCP, as well as the range, nature and complexity of clearing services offered by the CCP and the extent to which those services are of importance to clearing members and clients ('clearing participants') established in the Union. While the systemic importance of a CCP should be assessed in a holistic way, ESMA should take specific account of the proportion of the business of the CCP conducted in Union currencies, as well as the proportion of the business of the CCP originated from clearing participants established in the Union. For a CCP more likely to be of systemic importance to the Union it is important that ESMA assesses the structure and ownership of the group of which the CCP might be part in order to determine whether the interests of the Union are at risk. Additionally, the depth, liquidity and transparency of the markets served by such a CCP should also be assessed so that ESMA can better grasp the risk to clearing members established in the Union in the conduct of a default management auction.

(4) The capital of the CCP and the financial resources committed by clearing participants as well as the type and nature of the collateral that they provide, are essential elements to be considered when assessing the capacity of a CCP to withstand any adverse development. When taking into account the criterion set out in point (b) of Article 25(2a) of Regulation (EU) No 648/2012, ESMA should therefore have an overview of the financial resources available to the CCP in case of a default or a non-default event. ESMA should also consider the secured, unsecured, committed, uncommitted, funded or unfunded nature of these resources as well as the means used by the CCP to provide legal certainty and confidence as to the settlement of the payments it effects and the collateral it has to deal with. Finally,

([1]) OJ L 201, 27.7.2012, p. 1.

ESMA should consider the existence, nature and effect of a recovery and resolution framework for CCPs in the jurisdiction the CCP applying for recognition operates. Such recovery and resolution frameworks should be assessed against internationally agreed guidance and key attributes. When looking at settlement and liquidity risk, ESMA should pay particular attention for those CCPs that are likely to be systemic on how securely those CCP access liquidity as well as the liquidity strains on Union currencies. While the safety of payments and settlements might be reinforced through the use of distributed ledger technology or other recent technologies, ESMA should pay attention to the additional risk it may bring to the CCP, in particular cyber risk.

(5) The nature of the conditions imposed by a CCP in order for clearing participants to access its services and the interlinkages between those clearing participants have repercussions on the way a CCP may be affected by an adverse event in relation to those participants. Therefore, when taking into account the criterion set out in point (c) of Article 25(2a) of Regulation (EU) No 648/2012, ESMA should determine to the extent possible the identity of clearing participants to the CCP, in particular where that CCP provides services to clearing participants established in the Union. ESMA should also determine the relevant market share or relative importance of clearing participants or groups of clearing participants in that CCP. Insofar as necessary to assess the impact it might have on the clearing membership structure, ESMA should assess the conditions and options under which the CCP provides access to its clearing services. With respect to a CCP that is likely to be systemic to the Union, ESMA should assess whether the legal and prudential requirements that a CCP imposes on its clearing members are sufficiently stringent.

(6) In the event of a disruption to a CCP, clearing participants may have to rely, whether directly or indirectly, on the provision by other CCPs of similar or identical services. In order to assess the relative importance of the CCP applying for recognition, ESMA should therefore, when taking into account the criterion set out in point (d) of Article 25(2a) of Regulation (EU) No 648/2012, determine whether clearing participants may substitute some or all of the clearing services provided by that CCP with services provided by other CCPs, in particular where those alternative CCPs are authorised or recognised in the Union. Where clearing members and clients established in the Union can only clear certain products subject to a clearing obligation in one third-country CCP, the systemic importance of that CCP should be considered with acute attention by ESMA.

(7) CCPs may be connected in many ways to other financial infrastructures such as other CCPs or central securities depositaries. A disruption those connections may adversely affect the good functioning of the CCP. Therefore, when taking into account the criterion set out in point (e) of Article 25(2a) of Regulation (EU) No 648/2012, ESMA should assess the extent to which the CCP is connected with other financial market infrastructures or financial institutions in a way that could impact the financial stability of the Union or of one or more of its Member States. In doing this ESMA should give particular attention to those connections and interdependencies with entities located in the Union. Finally, ESMA should identify and assess the nature of the services outsourced by the CCP and the risk such arrangements might pose to the CCP in case they were to be interrupted or impaired in any way.

(8) Where, as determined using objective quantitative indicators, the exposure of clearing members and clients established in the Union to a CCP is significant, ESMA should assess additional elements for each criterion. The more of those indicators are met by a CCP, the greater the likelihood that ESMA concludes that that CCP is of systemic importance for the financial stability of the Union or of one or more of its Member States.

(9) This Delegated Regulation should enter into force as a matter of urgency to ensure the fastest operationalisation of Regulation (EU) 2019/2099 [2] of the European Parliament and of the Council,

HAS ADOPTED THIS REGULATION:

Article 1

The nature, size and complexity of the CCP's business

1. When taking into account the criterion set out in point (a) of Article 25(2a) of Regulation (EU) No 648/2012, ESMA shall assess the following elements:

(a) the countries where the CCP provides or intends to provide services;

[2] Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 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 (OJ L 322, 12.12.2019, p. 1).

(b) the extent to which the CCP provides other services in addition to clearing services;

(c) the type of financial instruments cleared or to be cleared by the CCP;

(d) whether the financial instruments cleared or to be cleared by the CCP are subject to the clearing obligation under Article 4 of Regulation (EU) No 648/2012;

(e) the average values cleared by the CCP over one year, at the following levels:

(i) the level of the CCP;

(ii) the level of each clearing member that is an entity established in the Union or an entity part of a group subject to consolidated supervision in the Union;

(iii) the level of clearing members established outside of the Union or that are not part of a group subject to consolidated supervision in the Union where they clear on behalf of clients and indirect clients established in the Union, in aggregate;

(f) whether the CCP has completed an assessment of its risk profile based on internationally agreed standards or otherwise, the methodology used and the result of the assessment.

2. For the purposes of point (e) of paragraph 1, ESMA shall assess the following values separately:

(a) for securities transactions (including securities financing transactions according to Regulation (EU) 2015/2365 of the European Parliament and of the Council) ([3]), the value of open positions or open interest;

(b) for derivative transactions traded on a regulated market within the meaning of Directive 2014/65/EU of the European Parliament and of the Council ([4]), the value of open interest or turnover;

(c) for over-the-counter (OTC) derivatives transactions, the gross and net notional outstanding amount.

Those values shall be assessed per currency and per asset class.

3. Where any of the indicators referred to in Article 6 applies, ESMA, in addition to the elements listed in paragraph 1 of this Article, shall also assess the following elements:

(a) the ownership structure of the CCP;

(b) where the CCP belongs to the same group as another financial market infrastructure, such as another CCP or central securities depository, the corporate structure of the group to which the CCP belongs;

(c) whether the CCP provides clearing services to clients or indirect clients established in the Union through clearing members established outside of the Union;

(d) the nature, depth and liquidity of the markets served and the level of available information on the adequate pricing data to market participants and any generally accepted and reliable pricing sources;

(e) whether quotes, pre-trade bid and offer prices and depths of trading interests are made public;

(f) whether post-trade price, volume and time of the transactions executed or concluded, on and off the markets served by the CCP are made public.

([3]) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

([4]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Article 2

The effect of failure of or a disruption to a CCP

1. When taking into account the criterion set out in point (b) of Article 25(2a) of Regulation (EU) No 648/2012, ESMA shall assess the following elements:

(a) the capital, including retained earnings and reserves, of the CCP;

(b) the type and amount of collateral accepted and held by the CCP, the haircuts applied, the corresponding haircut methodology, the currencies in which the collateral is denominated and the extent to which the collateral is provided by entities established in the Union or that are part of a group subject to consolidated supervision in the Union;

(c) the maximum amount of margins collected by the CCP on a single day during a period of 365 days preceding ESMA's assessment;

(d) the maximum amount of margins collected by the CCP on a single day during a period of 365 days preceding ESMA's assessment from each clearing member that is an entity established in the Union or an entity part of a group subject to consolidated supervision in the Union, per asset class or segregated default fund where applicable;

(e) where applicable for each default fund of the CCP, the maximum default fund contributions required and held by the CCP on a single day during a period of 365 days preceding ESMA's assessment;

(f) where applicable for each default fund of the CCP, the maximum default fund contributions required and held by the CCP on a single day during a period of 365 days preceding ESMA's assessment from each clearing member that is an entity established in the Union or an entity part of a group subject to consolidated supervision in the Union;

(g) the estimated largest payment obligation on a single day in total and in each Union currency that would be caused by the default of any one or two largest single clearing members (and their affiliates) in extreme but plausible market conditions;

(h) the total amount and for each Union currency of liquid financial resources to the CCP's benefit separated by type of resources, including cash deposits, committed or uncommitted resources;

(i) the amount of total liquid financial resources committed to the CCP by entities established in the Union or that are part of a group subject to consolidated supervision in the Union.

2. Where any of the indicators referred to in Article 6 applies, ESMA, in addition to the elements listed in paragraph 1 of this Article, shall also assess the following elements:

(a) the identity of the liquidity providers established in the Union or which are part of a group subject to consolidated supervision in the Union;

(b) the average and peak aggregate daily values of incoming and outgoing Union currency payments;

(c) the extent to which central bank money is used for settlement and payment or whether other entities are used for settlement or payment;

(d) the extent to which the CCP applies technologies such as distributed ledger technology in its settlement/payment process;

(e) the recovery plan of the CCP;

(f) the resolution regime applicable to the CCP;

(g) whether a crisis management group has been established for that CCP.

Article 3

The CCP's clearing membership structure

1. When taking into account the criterion set out in point (c) of Article 25(2a) of Regulation (EU) No 648/2012 ESMA shall assess the following:

(a) the clearing membership and, where the information is available, whether and which clients or indirect clients, established in the Union or that are part of a group subject to consolidated supervision in the Union are using the clearing services of the CCP; and

(b) the different options available to access the clearing services of the CCP (including different membership and direct access models for clients), any conditions for granting, denying or terminating access.

2. Where any of the indicators referred to in Article 6 applies, ESMA, in addition to the elements listed in paragraph 1 of this Article, shall specifically assess any legal or prudential requirements imposed by the CCP on clearing members to access its clearing services.

Article 4

Alternative clearing services provided by other CCPs

1. When taking into account the criterion set out in point (d) of Article 25(2a) of Regulation (EU) No 648/2012, ESMA shall assess whether clearing members and clients established in the Union may access some or all of the clearing services provided by a CCP through other CCPs and whether those CCPs are authorised or recognised under Articles 14 and 25 of that Regulation.

2. Where any of the indicators referred to in Article 6 applies, ESMA, in addition to the elements listed in paragraph 1 of this Article, shall also assess whether the services provided by the CCP relate to a class of derivatives subject to the clearing obligation under Article 4 of Regulation (EU) No 648/2012.

Article 5

The CCP's relationship, interdependencies, or other interactions

1. When taking into account the criterion set out in point (e) of Article 25(2a) of Regulation (EU) No 648/2012, ESMA shall assess the scope of functions, services or activities that have been outsourced by the CCP.

2. Where any of the indicators referred to in Article 6 applies, ESMA, in addition to the elements listed in paragraph 1 of this Article, shall also assess the following elements:

(a) the possible effects that the inability of the provider of outsourced functions, services or activities to comply with its obligations under the outsourcing arrangements would have on the Union or one or more of its Members States;

(b) whether the CCP serves trading venues established in the Union;

(c) whether the CCP has interoperability arrangements or cross-margining agreements with CCPs established in the Union, or links with or participation in other financial market infrastructures located in the Union, such as Central Securities Depositaries or payment systems.

Article 6

Indicators of minimum exposure of clearing members and clients established in the Union to the CCP

1. The indicators for the purpose of Articles 1 to 5 are the following:

(a) the maximum open interest of securities transactions, including securities financing transactions, or exchange traded derivatives denominated in Union currencies cleared by the CCP over a period of one year prior to the assessment or intended to be cleared by the CCP over a period of one year following the assessment is more than EUR 1 000 billion;

(b) the maximum notional outstanding of OTC derivatives transactions denominated in Union currencies cleared by the CCP over a period of one year prior to the assessment or intended to be cleared by the CCP over a period of one year following the assessment is more than EUR 1 000 billion;

(c) the average aggregated margin requirement and default fund contributions for accounts held at the CCP by clearing members that are entities established in the Union or part of a group subject to consolidated supervision in the Union, calculated by the CCP on a net basis at clearing member account level over a period of two years prior to the assessment is more than EUR 25 billion;

(d) the estimated largest payment obligation committed by entities established in the Union or part of a group subject to consolidated supervision in the Union and computed over a period of one year prior to the assessment, that would result from the default of at least the two largest single clearing members and their affiliates, in extreme but plausible market conditions is more than EUR 3 billion.

For the purposes of point (d), the payment obligation shall aggregate the commitments in all currencies of the Union converted into EUR as necessary.

2. ESMA may only determine, based on the criteria specified in Articles 1 to 5, that a third-country CCP is a Tier 2 CCP where at least one of the indicators in paragraph 1 is met.

Article 7

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 July 2020.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2020/1304

of 14 July 2020

supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the minimum elements to be assessed by ESMA when assessing third-country CCPs' requests for comparable compliance and the modalities and conditions of that assessment

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 25a(3) thereof,

Whereas:

(1) According to Article 25a of Regulation (EU) No 648/2012, a third-country central counterparty (CCP) that is systemically important or likely to become systemically important for the financial stability of the Union or one or more of its Member States (Tier 2 CCP) may request the European Securities and Markets Authority (ESMA) to assess whether that Tier 2 CCP's compliance with the applicable third-country framework may be deemed to satisfy compliance with the requirements set out in Article 16 and in Titles IV and V of Regulation (EU) No 648/2012 (comparable compliance), and to adopt a decision accordingly.

(2) Comparable compliance preserves the financial stability of the Union and ensures a level-playing field between Tier 2 CCPs and CCPs authorised in the Union while reducing administrative and regulatory burdens for those Tier 2 CCPs. The assessment of comparable compliance should, therefore, verify whether a Tier 2 CCP's compliance with the third-country framework effectively satisfies compliance with any or all requirements set out in Article 16, Title IV and V of Regulation (EU) No 648/2012. This Regulation should therefore indicate the elements to be assessed by ESMA when assessing a Tier 2 CCP's request for comparable compliance. When conducting that assessment, ESMA should also consider that CCP's compliance with any requirements in delegated or implementing acts that further specify those elements, including those requirements related to margin requirements, liquidity risk controls, and collateral requirements.

(3) In its assessment of whether compliance with the applicable third-country framework satisfies compliance with the requirements set out in Article 16, Title IV and V of Regulation (EU) No 648/2012, ESMA might also consider the recommendations developed by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions.

(4) ESMA should conduct a detailed assessment to determine whether to grant a Tier 2 CCP comparable compliance for Title IV of Regulation (EU) No 648/2012. Any potential refusal of comparable compliance with respect to that Title IV might impact the equivalence assessment conducted by the Commission pursuant to Article 25(6) of that Regulation. ESMA should therefore inform the Commission where it intends not to grant comparable compliance with respect to that Title.

(5) Where a Tier 2 CCP has entered into an interoperability arrangement with a CCP authorised under Article 14 of Regulation (EU) No 648/2012, that arrangement constitutes a direct link and, therefore, a direct channel of contagion, to a CCP in the Union. For such arrangements, ESMA should conduct a detailed assessment to determine whether to grant comparable compliance for Title V of that Regulation. An interoperability arrangement between a Tier 2 CCP and another third-country CCP does not constitute a direct link to a CCP in the Union but might, under certain circumstances, function as an indirect channel of contagion. For such arrangements, ESMA should only conduct a detailed assessment where the impact of that arrangement on the financial stability of the Union or one or more of its Member States justifies it.

([1]) OJ L 201, 27.7.2012, p. 1.

(6) Since one of the objectives of comparable compliance is to reduce administrative and regulatory burden for Tier 2 CCPs, comparable compliance should not be refused only because a Tier 2 CCP applies, under the applicable third-country framework, exemptions that are comparable to those set out in paragraphs 4 and 5 of Article 1 of Regulation (EU) No 648/2012. The assessment of comparable compliance should also take into account the extent to which not granting it may result in the impossibility for the Tier 2 CCP to comply with both Union and third-country requirements at the same time.

(7) ESMA's decision on whether to grant comparable compliance should be based on the assessment conducted at the time of the adoption of that decision. In order for ESMA to reassess its decision whenever relevant developments, including changes to a CCP's internal rules and procedures occur, the Tier 2 CCP should notify ESMA of any such developments.

(8) Regulation (EU) 2019/2099 of the European Parliament and of the Council [2], which inserted Article 25a into Regulation (EU) No 648/2012, started to apply on 1 January 2020. To ensure that that article is fully operational, this Regulation should enter into force as a matter of urgency,

HAS ADOPTED THIS REGULATION:

Article 1

Procedure for submitting a request for comparable compliance

1. The reasoned request referred to in Article 25a(1) of Regulation (EU) No 648/2012 shall be submitted either within the deadline set by ESMA in the notification informing the third-country CCP that it is not considered to be a Tier 1 CCP or at any moment after a third-country CCP has been recognised by ESMA as a Tier 2 CCP in accordance with Article 25(2b).

The Tier 2 CCP shall inform its competent authority of the submission referred to in the first subparagraph.

2. The reasoned request referred to in paragraph 1 shall specify:

(a) the requirements for which the Tier 2 CCP requests comparable compliance;

(b) the reasons why the Tier 2 CCP's compliance with the applicable third-country framework satisfies compliance with the relevant requirements set out in Article 16 and Titles IV and V of Regulation (EU) No 648/2012;

(c) the way in which the Tier 2 CCP complies with any conditions set out for the application of the implementing act referred to in Article 25(6) of Regulation (EU) No 648/2012.

For the purposes of point (b), the Tier 2 CCP shall provide, where relevant, the evidence referred to in Article 5.

3. The Tier 2 CCP shall, at ESMA's request, include in the reasoned request referred to in paragraph 1:

(a) a statement from its competent authority confirming that the Tier 2 CCP is of good repute and standing;

(b) where necessary, with regard to the requirements set out in Article 16 and Title V of Regulation (EU) No 648/2012, a translation of the relevant applicable third-country framework into a language commonly used in finance.

4. ESMA shall assess, within 30 working days of receipt of a reasoned request submitted in accordance with paragraph 1, whether that reasoned request is complete. ESMA shall set a deadline by which the Tier 2 CCP has to provide additional information where the request is incomplete.

5. ESMA shall decide whether to grant comparable compliance for the requirements included in the reasoned request within 90 working days from the receipt of a complete reasoned request submitted in accordance with paragraph 4 of this Article.

[2] Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 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 (OJ L 322, 12.12.2019, p. 1).

ESMA may postpone that decision where the reasoned request or the additional information referred to in paragraph 4 are not submitted in time and the assessment of that request could, as a result, delay ESMA's decision on the recognition of the third-country CCP or the review of its recognition.

6. A Tier 2 CCP for which ESMA has not granted comparable compliance for one or more requirements may not submit a new reasoned request as referred to in paragraph 1 regarding those requirements, unless there has been a relevant change to the applicable third-country framework or to the way in which that CCP complies with that framework.

Article 2

Comparable compliance with respect to Article 16 of Regulation (EU) No 648/2012

1. ESMA shall grant comparable compliance with respect to Article 16(1) of Regulation (EU) No 648/2012 where a Tier 2 CCP's capital, including retained earnings and reserves, has a permanent and available initial capital which corresponds to at least EUR 7,5 million.

2. ESMA shall grant comparable compliance with respect to Article 16(2) of Regulation (EU) No 648/2012 where a Tier 2 CCP's capital, including retained earnings and reserves, is at all times higher than or equal to the sum of:

(a) the CCP's capital requirements for winding down or restructuring its activities;

(b) the CCP's capital requirements for operational and legal risks;

(c) the CCP's capital requirements for credit, counterparty and market risks that are not already covered by the specific financial resources referred to in Articles 41 to 44 of Regulation (EU) No 648/2012 or comparable specific financial resources required by the CCP's home jurisdiction's legal order;

(d) the CCP's capital requirements for business risk.

For the purposes of the first subparagraph, ESMA shall calculate the capital requirements in accordance with the specific capital requirements set out in the applicable third-country framework, or, where that framework does not provide for any of those capital requirements, in accordance with the relevant requirements set out in Articles 2 to 5 of Commission Delegated Regulation (EU) No 152/2013 ([3]).

Article 3

Comparable compliance with respect to Title IV of Regulation (EU) No 648/2012

1. ESMA shall grant comparable compliance with respect to the requirements set out in Title IV of Regulation (EU) No 648/2012 where:

(a) the Tier 2 CCP complies with the requirements referred to in the implementing act referred to in Article 25(6) of that Regulation, if any;

(b) the Tier 2 CCP complies with all relevant elements set out in Annex I to this Regulation.

2. Before ESMA adopts a decision not to grant comparable compliance, it shall:

(a) verify its understanding of the applicable third-country framework and the way in which the Tier 2 CCP complies with it with that CCP's competent authority,

(b) inform the Commission thereof.

([3]) Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on capital requirements for central counterparties (OJ L 52, 23.2.2013, p. 37).

Article 4

Comparable compliance with respect to Title V of Regulation (EU) No 648/2012

1. Where a Tier 2 CCP has entered into an interoperability arrangement with a CCP authorised under Article 14 of Regulation (EU) No 648/2012, ESMA shall grant comparable compliance with respect to the requirements set out in Title V of that Regulation where the Tier 2 CCP complies with all relevant elements set out in Annex II to this Regulation.

2. Where a Tier 2 CCP has entered into an interoperability arrangement with a third-country CCP, ESMA shall grant comparable compliance with respect to the requirements set out in Title V of Regulation (EU) No 648/2012 unless the impact of that arrangement on the financial stability of the Union or one or more of its Member States justifies assessing whether to grant comparable compliance in accordance with paragraph 1.

Article 5

Exemptions and incompatible requirements

1. ESMA shall not refuse comparable compliance with respect to the requirements set out in Article 16 and Titles IV and V of Regulation (EU) No 648/2012 for the mere reason that the Tier 2 CCP applies an exemption under the applicable third-country framework which is comparable to any of those set out in paragraphs 4 and 5 of Article 1 of that Regulation. The Tier 2 CCP shall provide evidence that the Union and third-country exemption are comparable.

2. Where complying with a specific requirement set out in Article 16 or Titles IV or V of Regulation (EU) No 648/2012 implies a breach of the applicable third-country framework, ESMA shall grant comparable compliance with respect to that requirement only where the Tier 2 CCP provides evidence that:

(a) it is impossible to comply with that requirement without breaching a mandatory provision of the applicable third-country framework;

(b) the applicable third-country framework effectively achieves the same objectives as Article 16 and Titles IV and V of Regulation (EU) No 648/2012;

(c) it complies with the applicable third-country framework.

Article 6

Changes to the applicable third-country framework

A Tier 2 CCP that has been granted comparable compliance shall notify ESMA of any change to its applicable third-country framework and to its internal rules and procedures. ESMA shall inform the Commission of those notifications.

Article 7

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 July 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

ELEMENTS REFERRED TO IN ARTICLE 3(1)

Provision of Union law	Elements referred to in Article 3(1)
Chapter 1: Organisational requirements	
General provisions Article 26(1) of Regulation (EU) No 648/2012	The third-country CCP has: (a) robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility; (b) effective processes to identify, manage, monitor and report the risks to which it is or might be exposed; (c) adequate internal control mechanisms, including sound administrative and accounting procedures.
Article 26(2) of Regulation (EU) No 648/2012	The third-country CCP has established policies and procedures which are sufficiently effective so as to ensure compliance with the relevant third-country framework, including compliance with that framework by its managers and employees.
Article 26(3) and (4) of Regulation (EU) No 648/2012	The third-country CCP: (a) maintains and operates an organisational structure that ensures continuity and orderly functioning in the performance of its services and activities; (b) employs appropriate and proportionate systems, resources and procedures; (c) maintains a clear separation between the reporting lines for risk management and those for the other operations of the CCP.
Article 26(5) of Regulation (EU) No 648/2012	The third-country CCP implements and maintains a remuneration policy which promotes sound and effective risk management and which does not create incentives to relax risk standards.
Paragraphs 6, 7 and 8 of Article 26 of Regulation (EU) No 648/2012	The third-country CCP: (a) maintains information technology systems adequate to deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security and the integrity and confidentiality of the information maintained; (b) makes available publicly its governance arrangements, the rules governing the CCP, and its admission criteria for clearing membership; (c) is subject to frequent and independent audits, the results of which are communicated to its board and made available to its competent authority.
Senior management and the board Article 27(1) of Regulation (EU) No 648/2012	The senior management of a third-country CCP is of sufficiently good repute and has sufficient experience to ensure the sound and prudent management of the CCP.
Paragraphs 2 and 3 of Article 27 of Regulation (EU) No 648/2012	The third-country CCP has a board with a sufficient number of independent members that have clear roles and responsibilities, an adequate representation of clearing members and clients, and mechanisms to address any potential conflicts of interest within the CCP to ensure sound and prudent management of the CCP.

Provision of Union law	Elements referred to in Article 3(1)
Risk Committee Article 28 of Regulation (EU) No 648/2012	The third-country CCP: (a) maintains a body to advise the board, independently of any direct influence by the management of that CCP, on developments impacting the risk management of the CCP, ensuring the representation of its clearing members, independent members of the board and representatives of its clients; (b) has mechanisms in place to promptly inform the relevant competent authority of the third country of any decision in which the board decides not to follow the advice of that body.
Record Keeping Article 29(1) of Regulation (EU) No 648/2012	The third-country CCP maintains, for a period of at least 10 years, all the records on the services and activity provided so as to enable its competent authority to monitor its compliance with the relevant third-country framework.
Article 29(2) of Regulation (EU) No 648/2012	The third-country CCP maintains, for a period of at least 10 years following the termination of a contract, all information on all contracts it has processed to enable the identification of the original terms of a transaction before clearing by that CCP.
Article 29(3) of Regulation (EU) No 648/2012	The third-country CCP makes available to any relevant third-country authority, upon request, the records on the services and activity provided, the information on all contracts it has processed and all information on the positions of cleared contracts, irrespective of the venue where the transactions were executed.
Shareholders and members with qualifying holdings Article 30(1) of Regulation (EU) No 648/2012	The third-country CCP informs its competent authority of the identities of the shareholders or members that have qualifying holdings and of the amounts of those holdings.
Paragraphs 2 and 4 of Article 30 of Regulation (EU) No 648/2012	The shareholders or members that have qualifying holdings in a third-country CCP: (a) are suitable, taking into account the need to ensure the sound and prudent management of that CCP; (b) do not exercise an influence that is likely to be prejudicial to the sound and prudent management of the CCP.
Article 30(3) of Regulation (EU) No 648/2012	Close links between the third-country CCP and other natural or legal persons do not prevent the effective exercise of the supervisory functions of the competent authority of the third country.
Article 30(5) of Regulation (EU) No 648/2012	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, do not prevent the effective exercise of the supervisory functions of the competent authority.
Article 31(1) of Regulation (EU) No 648/2012	The third-country CCP notifies its competent authority of any changes to its management and the third-country framework ensures that appropriate measures are taken where the conduct of a member of the board of a third-country CCP is likely to be prejudicial to the sound and prudent management of the CCP.,.

Provision of Union law	Elements referred to in Article 3(1)
Conflict of Interest Article 33(1) of Regulation (EU) No 648/2012	The third-country CCP maintains and operates effective arrangements to identify, manage and resolve any potential conflicts of interest between itself, including its managers, employees, or any person with direct or indirect control or close links, and its clearing members or their clients known to the CCP.
Article 33(2) of Regulation (EU) No 648/2012	Where the arrangements of the third-country CCP to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a clearing member or client are prevented, , that CCP discloses to clearing members and, where clients are known to that CCP, to those clients, the general nature or sources of conflicts of interest before accepting new transactions from those clearing members.
Article 33(3) of Regulation (EU) No 648/2012	Where the third-country CCP is a parent undertaking or a subsidiary, , that CCP's arrangements to manage conflicts of interest take into account any circumstances of which the CCP is or should be aware which may give rise to a conflict of interest due to the structure and business activities of other undertakings of which it is a parent or a subsidiary.
Article 33(5) of Regulation (EU) No 648/2012	The third-country CCP takes all reasonable steps to prevent any misuse of information held in its systems and prevents the use of that information for other business activities.
Business Continuity Article 34(1) of Regulation (EU) No 648/2012	The third-country CCP implements and maintains an adequate business continuity policy and disaster recovery plan aimed at ensuring the preservation of its functions, the timely recovery of operations and the fulfilment of the CCP's obligations, including the recovery of all transactions at the time of disruption to enable the CCP to continue to operate with certainty and to complete settlement on the scheduled date.
Article 34(2) of Regulation (EU) No 648/2012	The third-country CCP implements and maintains an adequate procedure ensuring the timely and orderly settlement or transfer of the assets and positions of clients and clearing members in the event of a withdrawal of authorisation.
Outsourcing Article 35 of Regulation (EU) No 648/2012	When outsourcing operational functions, services or activities, the third-country CCP ensures that, at all times: (a) outsourcing does not result in the delegation of its responsibility; (b) the relationship and obligations of that CCP towards its clearing members or, where relevant, towards their clients are not altered; (c) outsourcing does not prevent the exercise of supervisory and oversight functions; (d) outsourcing does not result in depriving the CCP from the necessary systems and controls to manage the risks it faces; (e) the service provider implements equivalent business continuity requirements to those that the CCP must fulfil; (f) the CCP retains the necessary expertise and resources to evaluate the quality of the services provided and the organisational and capital adequacy of the service provider, and to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and supervises those functions and manages those risks on an ongoing basis;

Provision of Union law	Elements referred to in Article 3(1)
	(g) the CCP has direct access to the relevant information of the outsourced functions; (h) the service provider protects any confidential information relating to the CCP and its clearing members and clients.

Chapter 2: Conduct of business rules

General provisions Article 36(1) of Regulation (EU) No 648/2012	The third-country CCP, when providing services to its clearing members, and where relevant, to their clients, acts fairly and professionally in accordance with the best interests of such clearing members and clients and sound risk management.
Article 36(2) of Regulation (EU) No 648/2012	The third-country CCP has accessible, transparent and fair rules for the prompt handling of complaints.
Participation requirements Paragraphs 1 and 2 of Article 37 of Regulation (EU) No 648/2012	The third-country CCP establishes categories of admissible clearing members and non-discriminatory, transparent and objective admission criteria to ensure fair and open access to the CCP and sufficient financial resources and operational capacity of clearing members, enabling the CCP to control the risk it is exposed to, and monitors on an ongoing basis that those criteria are met.
Article 37(3) of Regulation (EU) No 648/2012	The third-country CCP's rules for clearing members enables it to gather relevant basic information to identify, monitor and manage relevant concentrations of risk relating to the provision of services to clients.
Paragraphs 4 and 5 of Article 37 of Regulation (EU) No 648/2012	The third-country CCP has objective and transparent procedures for the suspension and orderly exit of clearing members that no longer meet the admission criteria and can only deny access to clearing members meeting the admission criteria where duly justified in writing and based on a comprehensive risk analysis.
Article 37(6) of Regulation (EU) No 648/2012	Specific additional obligations on clearing members, such as the participation in auctions of a defaulting clearing member's position, are proportional to the risk brought by the clearing member and do not restrict participation to certain categories of clearing members.
Transparency Article 38(1) of Regulation (EU) No 648/2012	The third-country CCP publicly discloses the prices and fees associated with each service provided, including discounts and rebates and the conditions to benefit from those reductions, and allows its clearing members and, where relevant, their clients, separate access to the specific services provided.
Article 38(2) of Regulation (EU) No 648/2012	The third-country CCP discloses to clearing members and clients the risks associated with the services provided.
Article 38(3) of Regulation (EU) No 648/2012	The third-country CCP discloses to its clearing members the price information used to calculate its end-of-day exposures to its clearing members, and publicly discloses the volumes of the cleared transactions for each class of instruments cleared by the CCP on an aggregated basis.

Provision of Union law	Elements referred to in Article 3(1)
Article 38(4) of Regulation (EU) No 648/2012	The third-country CCP publicly discloses 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 related to access of trading venues to the CCP.
Paragraphs 6 and 7 of Article 38 of Regulation (EU) No 648/2012	The third-country CCP provides its clearing members with information on the initial margin models it uses, explaining how the models operate and describing the key assumptions and limitations of those models.
Segregation and Portability Article 39 of Regulation (EU) No 648/2012	The third-country CCP keeps separate records and accounts for each clearing member, segregates the assets and positions of the clearing member from the assets and positions of the clients of the clearing member, and provides sufficient protection for the assets and positions of each clearing member and each client, as well as a choice of segregation of positions and assets and of options of portability to each client, including individual client segregation.

Chapter 3: Prudential requirements

Exposure management Article 40 of Regulation (EU) No 648/2012	The third-country CCP maintains appropriate policies and mechanisms to manage, on a near to real time basis, intra-day exposures to sudden changes in market conditions and in positions.
Margin requirements Article 41(1) of Regulation (EU) No 648/2012	The third-country CCP imposes, calls and collects margins to limit its credit exposures from its clearing members and, where relevant, from CCPs with which it has interoperability arrangements, and that CCP regularly monitors and, if necessary, revises the level of its margins to reflect current market conditions taking into account any potentially procyclical effects of such revisions. Such margins shall be sufficient: (a) to cover potential exposures that may occur until the liquidation of the relevant positions; (b) to cover losses that result from at least 99 % of the exposures movements over an appropriate time horizon. Those margins ensure that a CCP fully collateralises its exposures with all its clearing members, and, where relevant, with CCPs with which it has interoperability arrangements, at least on a daily basis.
Article 41(2) of Regulation (EU) No 648/2012	The third-country CCP applies 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.
Article 41(3) of Regulation (EU) No 648/2012	The third-country CCP calls and collects margins on an intraday basis, at least when predefined thresholds are exceeded.
Article 41(4) of Regulation (EU) No 648/2012	The third-country CCP calculates, calls and collects margins that are adequate to cover the risk stemming from the positions registered in each account with respect to specific financial instruments, or to a portfolio of financial instruments provided that the methodology used is prudent and robust.

Provision of Union law	Elements referred to in Article 3(1)
Default Fund and Other Financial Resources Paragraphs 1 and 4 of Article 42 of Regulation (EU) No 648/2012	The third-country CCP: (a) maintains one or more pre-funded default funds to cover losses that exceed the losses to be covered by margins, arising from the default, including the opening of an insolvency procedure, of one or more clearing members; (b) establishes a minimum amount below which the size of the default fund is not to fall under any circumstances.
Article 42(2) of Regulation (EU) No 648/2012	The third-country CCP establishes the minimum size of contributions to the default fund and the criteria to calculate the contributions of the single clearing members. The contributions are proportional to the exposures of each clearing member.
Articles 42(3) and 43(2) of Regulation (EU) No 648/2012	The third-country CCP develops scenarios of extreme but plausible market conditions, including the most volatile periods that have been experienced by the markets for which that CCP provides its services, and a range of potential future scenarios, taking into account sudden sales of financial resources and rapid reductions in market liquidity, and the default fund of that CCP enables it, at all times, to withstand the default of at least the two clearing members to which it has the largest exposures under extreme but plausible market conditions.
Article 43(1) of Regulation (EU) No 648/2012	The default fund of the third-country CCP maintains sufficient pre-funded available financial resources to cover potential losses that exceed the losses to be covered by margins. Those pre-funded available financial resources include dedicated resources of the CCP, are freely available to the CCP and are not used to meet capital requirements.
Article 43(3) of Regulation (EU) No 648/2012	The third-country CCP ensures that the exposures of the clearing members toward that CCP are limited.
Liquidity risk controls Article 44(1) of Regulation (EU) No 648/2012	The third-country CCP: (a) has access to adequate liquidity at all times measured to cover its liquidity needs on a daily basis and taking into account the liquidity risk generated by the default of at least the two clearing members to which it has the largest exposures; (b) obtains the necessary credit lines or similar arrangements to cover its liquidity needs in case the financial resources at its disposal are not immediately available; (c) ensures that a clearing member, parent undertaking or subsidiary of that clearing member together do not provide more than 25 % of the credit lines needed by that CCP.
Default waterfall Paragraphs 1 and 2 of Article 45 of Regulation (EU) No 648/2012	The third-country CCP uses the margins posted by a defaulting clearing member prior to other financial resources in covering losses and thereafter, where the margins posted by that clearing member are not sufficient to cover the losses incurred by the CCP, the default fund contribution of that clearing member to cover those losses.
Paragraphs 3 and 4 of Article 45 of Regulation (EU) No 648/2012	The third-country CCP: (a) uses contributions to the default fund of the non-defaulting clearing members and any other financial resources that are part of its default waterfall only after having exhausted the contributions of the defaulting clearing member and its dedicated own resources;

Provision of Union law	Elements referred to in Article 3(1)
	(b) does not use the margins posted by non-defaulting clearing members to cover the losses resulting from the default of another clearing member.
Collateral requirements Article 46 of Regulation (EU) No 648/2012	The third-country CCP accepts only highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members, and applies adequate haircuts to asset values that 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, taking 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.
Investment Policy Article 47(1) of Regulation (EU) No 648/2012	The third-country CCP invests its financial resources only in cash or in highly liquid financial instruments with minimal market and credit risk, and its investments are capable of being liquidated rapidly with minimal adverse price effect.
Article 47(3) of Regulation (EU) No 648/2012	The third-country CCP deposits financial instruments posted as margins or as default fund contributions with, where available, operators of securities settlement systems that ensure the full protection of those financial instruments, or with other authorised financial institutions using alternative highly secure arrangements.
Article 47(4) of Regulation (EU) No 648/2012	Cash deposits of the third-country CCP are performed through highly secure arrangements with authorised financial institutions or, alternatively, through the use of the standing deposit facilities of central banks or other comparable means provided for by central banks.
Article 47(5) of Regulation (EU) No 648/2012	When depositing assets with a third party, the third-country CCP: (a) ensures that the assets belonging to the clearing members are identifiable separately from the assets belonging to that CCP and from assets belonging to that third party by means of differently titled accounts on the books of the third party or any other equivalent measures that achieve the same level of protection; (b) has prompt access to the financial instruments when required.
Article 47(6) of Regulation (EU) No 648/2012	The third-country CCP does not invest its capital or the sums arising from margins, default fund contributions, liquidity or other financial resources, in its own securities or those of its parent undertaking or its subsidiary.
Article 47(7) of Regulation (EU) No 648/2012	The third-country CCP takes into account its overall credit risk exposures to individual obligors in making its investment decisions and ensures that its overall risk exposure to any individual obligor remains within acceptable concentration limits.
Default procedures Article 48(1) of Regulation (EU) No 648/2012	The third-country CCP has procedures in place to be followed where a clearing member does not comply with the participation requirements of the CCP or when that clearing member is declared in default either by the CCP or by a third party.

Provision of Union law	Elements referred to in Article 3(1)
Article 48(2) of Regulation (EU) No 648/2012	The third-country CCP takes prompt action to contain losses and liquidity pressures resulting from defaults and ensures that the closing out of any clearing member's positions does not disrupt its operations or expose the non-defaulting clearing members to losses that they cannot anticipate or control.
Article 48(3) of Regulation (EU) No 648/2012	The third-country framework ensures that the third-country CCP promptly informs its competent authority before the default procedure is declared or triggered.
Article 48(4) of Regulation (EU) No 648/2012	The third-country CCP verifies that its default procedures are enforceable.
Paragraphs 5, 6 and 7 of Article 48 of Regulation (EU) No 648/2012	The third-country CCP: (a) acts in accordance with the rules of protection of collateral and positions of the client accounts applicable in the third country; (b) implements procedures facilitating the porting of clients' positions and collateral in accordance with the rules applicable in the third country.
Review of models, stress testing and back testing Article 49(1) of Regulation (EU) No 648/2012	The third-country CCP: (a) regularly reviews the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms; (b) subjects those models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions; (c) performs back tests to assess the reliability of the methodology adopted; (d) obtains either an independent validation or a validation by its competent authority of those models and of any significant changes thereto.
Article 49(2) of Regulation (EU) No 648/2012	The third-country CCP regularly tests the key aspects of its default procedures and takes all reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event.
Article 49(3) of Regulation (EU) No 648/2012	The third-country CCP publicly discloses key information on its risk-management model and assumptions adopted to perform the stress tests on the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms.
Settlement Article 50(1) of Regulation (EU) No 648/2012	The third-country CCP uses, where practical and available, central bank money to settle its transactions or, where central bank money is not used, takes steps to strictly limit cash settlement risks.
Article 50(2) of Regulation (EU) No 648/2012	The third-country CCP clearly states its obligations with respect to deliveries of financial instruments including whether it has an obligation to make or receive delivery of a financial instrument or whether it indemnifies participants for losses incurred in the delivery process.

Provision of Union law	Elements referred to in Article 3(1)
Article 50(3) of Regulation (EU) No 648/2012	Where the third-country CCP has an obligation to make or receive deliveries of financial instruments, that CCP eliminates principal risk through the use of delivery-versus-payment mechanisms to the extent possible.
Chapter 4: Calculations and reporting for the purposes of Regulation (EU) No 575/2013of the European Parliament and of the Council [1]	
Calculations and reporting Articles 50a to 50d of Regulation (EU) No 648/2012	The third-country CCP applies reporting requirements on capital requirements calculations in accordance with the respective third-country framework applicable to rules on accounting and capital requirements.

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

ANNEX II

ELEMENTS REFERRED TO IN ARTICLE 4(1)

Provision of Union law	Elements referred to in Article 4(1)
Interoperability arrangements Article 51(2)of Regulation (EU) No 648/2012	Where an interoperability arrangement is established to provide services to a particular trading venue, the third-country CCP has non-discriminatory access both to the data that it needs for the performance of its functions from that particular trading venue and to the relevant settlement system;
Article 51(3)of Regulation (EU) No 648/2012	The third-country CCP rejects or restricts entering into an interoperability arrangement or accessing a data feed or a settlement system, directly or indirectly, only in order to control any risk arising from that arrangement or access.
Risk management Paragraphs 1 and 2 of Article 52 of Regulation (EU) No 648/2012	The CCPs that have entered into an interoperability arrangement : (a) have in place adequate policies, procedures and systems to effectively identify, monitor and manage the risks arising from that interoperability arrangement so that they can meet their obligations in a timely manner; (b) agree on their respective rights and obligations, including the applicable law governing their relationships; (c) identify, monitor and effectively manage credit and liquidity risks so that a default of a clearing member of one CCP does not affect an interoperable CCP; (d) identify, monitor and address potential interdependences and correlations that arise from an interoperability arrangement that may affect credit and liquidity risks relating to clearing member concentrations, and pooled financial resources; (e) where the risk-management models used by the interoperable CCPs to cover their exposure to their clearing members or their reciprocal exposures are different, those CCPs identify those differences, assess risks that may arise therefrom and take measures, including securing additional financial resources, that limit their impact on the interoperability arrangement as well as their potential consequences in terms of contagion risks and ensure that these differences do not affect each CCP's ability to manage the consequences of the default of a clearing member.
Provision of margins among CCPs Article 53 of Regulation (EU) No 648/2012	The third-country CCP distinguishes in accounts the assets and positions held for the account of CCPs with which it has entered into an interoperability arrangement. The third-country CCP only provides initial margins to that CCP under a security financial collateral arrangement by which the receiving CCP has no right of use over the margins provided by the other CCP. Collateral received in the form of financial instruments is protected in either of the following manners: (i) it is deposited with operators of securities settlement systems that ensure the full protection of those financial instruments; (ii) other highly secure arrangements with authorised financial institutions are used; Assets are available to the receiving CCP only in case of default of the CCP which has provided the collateral in the context of an interoperability arrangement. In case of default of the CCP which has received the collateral in the context of an interoperability arrangement, the collateral provided is readily returned to the providing CCP.

DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2020/1305

of 18 September 2020

authorising the United Kingdom to express its consent, in its own capacity, to be bound by certain international agreements to be applied during the transition period in the area of the Union's common fisheries policy

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ([1]), and in particular Article 3(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 129(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ([2]) ('the Withdrawal Agreement') provides that, during the transition period, the United Kingdom is to be bound by the obligations stemming from the international agreements concluded by the Union, by Member States acting on its behalf, or by the Union and its Member States acting jointly.

(2) Article 129(3) of the Withdrawal Agreement provides that, in accordance with the principle of sincere cooperation, the United Kingdom is to refrain, during the transition period, from any action or initiative which is likely to be prejudicial to the Union's interests, in particular in the framework of any international organisation, agency, conference or forum of which the United Kingdom is a party in its own right.

(3) Pursuant to Article 129(4) of the Withdrawal Agreement, during the transition period, the United Kingdom may negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union, provided that those agreements do not enter into force or apply during the transition period, unless so authorised by the Union.

(4) Decision (EU) 2020/135 sets out the conditions and procedure for granting such authorisations.

(5) Pursuant to Article 3(1) of Decision (EU) 2020/135, the Council may authorise the United Kingdom to express its consent, in its own capacity, to be bound by an international agreement intended to enter into force or be applied during the transition period, in an area of exclusive competence of the Union.

(6) On 3 April 2020, the United Kingdom notified the Commission of its intention to express its consent, in its own capacity, to be bound by five international agreements establishing five regional fisheries management organisations (RFMOs), intended to be applied during the transition period, in the area of the Union's exclusive external competence on fisheries. Those agreements are: the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries ([3]) establishing the North-East Atlantic Fisheries Commission (NEAFC); the Convention on

([1]) OJ L 29, 31.1.2020, p. 1.
([2]) OJ L 29, 31.1.2020, p. 7.
([3]) Council Decision 81/608/EEC of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries (OJ L 227, 12.8.1981, p. 21).

Future Multilateral Cooperation in the Northwest Atlantic Fisheries ([4]) establishing the Northwest Atlantic Fisheries Organization (NAFO); the International Convention for the Conservation of Atlantic Tunas ([5]) establishing the International Commission for the Conservation of Atlantic Tunas (ICCAT); the Agreement for the establishment of the Indian Ocean Tuna Commission ([6]) (IOTC); and the Convention for the Conservation of Salmon in the North Atlantic Ocean ([7]) establishing the North Atlantic Salmon Conservation Organization (NASCO).

(7) The United Kingdom justifies its interest in acceding to those agreements during the transition period in light of Articles 63 and 64 of the United Nations Convention on the Law of the Sea ([8]) (UNCLOS) and Articles 7 and 8 of the United Nations Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks ([9]) (UNFSA), in particular the obligations of the Union and of the United Kingdom to cooperate through appropriate regional organisations in the conservation and management of shared stocks. The United Kingdom considers that neither it nor the Union can give full effect to those obligations unless the United Kingdom is able during the transition period to cooperate independently with the Union and other relevant States on matters affecting the United Kingdom as an independent coastal State and fishing State after the end of the transition period. The United Kingdom thus wants to participate in discussions during the transition period on fisheries management decisions that would take effect after the end of the transition period.

(8) By means of its letter of 3 April 2020, the United Kingdom has demonstrated a specific interest in the international agreements in question already applying during the transition period. Therefore, the condition set out in point (a) of Article 3(1) of Decision (EU) 2020/135 is fulfilled.

(9) The five international agreements in question are compatible with Union law applicable to and in the United Kingdom in accordance with Article 127(1) of the Withdrawal Agreement and with the obligations referred to in Article 129(1) of the Withdrawal Agreement. Therefore, the condition set out in point (b) of Article 3(1) of Decision (EU) 2020/135 is fulfilled.

(10) The United Kingdom also confirmed that its accession to those international agreements establishing RFMOs would not be prejudicial to the Union's interests. The United Kingdom only intends to participate in meetings on issues that concern matters having effect after the end of the transition period. In particular, the United Kingdom's membership in those RFMOs in its own capacity, during the transition period, does not put at risk the attainment of the objectives of the Union's external action in the area of the common fisheries policy and is not otherwise prejudicial to the Union's interests. Therefore, the condition set out in point (c) of Article 3(1) of Decision (EU) 2020/135 is fulfilled.

(11) Pursuant to Article 3(2) of Decision (EU) 2020/135, such authorisation may be conditional. The authorisation should be granted provided that the United Kingdom participates only in matters to be applied or take effect after the end of the transition period.

(12) The United Kingdom is bound by the obligations resulting from UNCLOS and UNFSA and consequently has to manage and conserve marine living resources in a sustainable manner. Those objectives are in line with the Union's objective of ensuring sustainability and of securing continued responsible fisheries that ensures the long-term conservation and sustainable exploitation of marine biological resources.

(13) Therefore, in accordance with Article 129(4) of the Withdrawal Agreement, during the transition period, the United Kingdom can sign and ratify in its own capacity the five international agreements underlying the five RFMOs to which it seeks accession. This would facilitate and enable the United Kingdom to give full effect to the obligations resulting from UNCLOS, in particular Articles 63 and 64 thereof, at the moment the transition period ends and Union law ceases to apply to it.

([4]) Council Regulation (EEC) No 3179/78 of 28 December 1978 concerning the conclusion by the European Economic Community of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (OJ L 378, 30.12.1978, p. 1).

([5]) Council Decision 86/238/EEC of 9 June 1986 on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984 (OJ L 162, 18.6.1986, p. 33).

([6]) Council Decision 95/399/EC of 18 September 1995 on the accession of the Community to the Agreement for the establishment of the Indian Ocean Tuna Commission (OJ L 236, 5.10.1995, p. 24).

([7]) Council Decision 82/886/EEC of 13 December 1982 concerning the conclusion of the Convention for the Conservation of Salmon in the North Atlantic Ocean (NASCO) (OJ L 378, 31.12.1982, p. 24).

([8]) OJ L 179, 23.6.1998, p. 3.

([9]) OJ L 189, 3.7.1998, p. 16.

(14) The United Kingdom should therefore be authorised to express its consent, in its own capacity, to be bound by the international agreements intended to be applied during the transition period.

(15) In order to ensure the good functioning of the Union's common fisheries policy during the transition period, the United Kingdom should not participate in matters applied or taking effect during the transition period. Moreover, in order not to prejudice the ongoing negotiations on fisheries in the context of the future partnership agreement between the Union and the United Kingdom, in particular as regards fishing opportunities for which the Union's quota currently includes the share of the United Kingdom, the United Kingdom should enter into consultation with the Union prior to discussing such quota,

HAS ADOPTED THIS DECISION:

Article 1

1. The United Kingdom is authorised to express its consent, in its own capacity, to be bound by the following international agreements, which are intended to be applied during the transition period:

(a) the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, establishing the North-East Atlantic Fisheries Commission (NEAFC);

(b) the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, establishing the Northwest Atlantic Fisheries Organization (NAFO);

(c) the International Convention for the Conservation of Atlantic Tunas, establishing the International Commission for the Conservation of Atlantic Tunas (ICCAT);

(d) the Agreement for the establishment of the Indian Ocean Tuna Commission (IOTC);

(e) the Convention for the Conservation of Salmon in the North Atlantic Ocean, establishing the North Atlantic Salmon Conservation Organization (NASCO).

2. The authorisation referred to in paragraph 1 shall be limited to participation in matters applied or taking effect after the end of the transition period.

3. Where the fishing quota shared with the Union is concerned, the authorisation referred to in paragraphs 1 and 2 shall be subject to prior consultation by the United Kingdom with the Commission.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 18 September 2020.

For the Council
The President
M. ROTH

DECISION (EU) 2020/1306 OF THE EUROPEAN CENTRAL BANK

of 16 September 2020

on the temporary exclusion of certain exposures to central banks from the total exposure measure in view of the COVID-19 pandemic (ECB/2020/44)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ([1]), and in particular Article 4 (1)(d) thereof,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([2]), and in particular Article 500b thereof,

Whereas:

(1) The Basel III framework introduced a simple, transparent, non-risk-based leverage ratio to act as a credible supplementary measure to the risk-based capital requirements. The leverage ratio standard published by the Basel Committee on Banking Supervision (BCBS) in December 2017 (hereinafter referred to as the 'BCBS standard on the leverage ratio') provides that in order to facilitate the implementation of monetary policies, a jurisdiction may, at its discretion, temporarily exempt central bank reserves from the leverage ratio exposure measure in exceptional macroeconomic circumstances.

(2) The BCBS standard on the leverage ratio was first implemented in Union legislation by Regulation (EU) No 575/2013. Article 430 of Regulation (EU) No 575/2013 requires institutions to report to the competent authorities certain information on their leverage ratio and its components, while Article 451 of that Regulation requires institutions to disclose certain information regarding their leverage ratio and their management of the risk of excessive leverage.

(3) Regulation (EU) No 575/2013 was amended by Regulation (EU) 2019/876 of the European Parliament and of the Council ([3]), inter alia, to reflect revisions that were made to the BCBS standard on the leverage ratio so as to ensure a level playing field internationally for institutions established inside the Union but operating outside the Union, and to ensure that the leverage ratio remains an effective complement to risk-based own funds requirements. Regulation (EU) 2019/876 introduced a leverage ratio requirement to complement the system of reporting and disclosure of the leverage ratio. That Regulation also introduced the possibility of temporarily excluding certain exposures to central banks from the calculation of an institution's total exposure measure in exceptional circumstances and in order to facilitate the implementation of monetary policies. These amendments to the leverage ratio framework, including the discretion to exclude certain exposures to central banks from the total exposure measure, will become applicable on 28 June 2021.

(4) Regulation (EU) No 575/2013 has since been further amended by Regulation (EU) 2020/873 of the European Parliament and of the Council ([4]), inter alia, to provide for the possibility of temporarily excluding certain exposures to central banks from the calculation of an institution's total exposure measure before 28 June 2021 – that is, before the amendments to the leverage ratio requirement that were introduced by Regulation (EU) 2019/876 become applicable. In particular, Article 500b of Regulation (EU) No 575/2013 permits an institution to exclude certain

([1]) OJ L 287, 29.10.2013, p. 63.
([2]) OJ L 176, 27.6.2013, p. 1.
([3]) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).
([4]) Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020 amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic (OJ L 204, 26.6.2020, p. 4).

exposures to the institution's central bank from the total exposure measure where the institution's competent authority has determined, after consultation with the relevant central bank, and publicly declared that exceptional circumstances exist that warrant the exclusion in order to facilitate the implementation of monetary policies. Article 500b of Regulation (EU) No 575/2013 has applied since 27 June 2020.

(5) While financial markets have stabilised since April 2020, financing conditions in the euro area are tighter than at the beginning of the year, on account of higher bond yields and lower equity prices. The situation brought about by the coronavirus (COVID-19) pandemic, as well as the resulting and continued need for a high degree of monetary policy accommodation, and the fragility and vulnerabilities of the euro area economies and of the bank-based transmission channel of monetary policy, all justify the view of the Governing Council of the European Central Bank (ECB) that exceptional circumstances exist that warrant the temporary exclusion until 27 June 2021 of certain exposures to Eurosystem central banks from the calculation of institutions' total exposure measures in order to facilitate the implementation of monetary policies, for the purposes of Article 500b of Regulation (EU) No 575/2013.

(6) The exposures that may be excluded comprise coins and banknotes constituting legal currency in the jurisdiction of the central bank and assets representing claims on the central bank – including reserves held at the central bank – insofar as these exposures are relevant for the transmission, and therefore, implementation of monetary policy. Such exposures include deposits held in the deposit facility and balances held on reserve accounts with the Eurosystem, including funds held in order to meet minimum reserve requirements. Exposures representing claims on the central bank that are not related to the implementation of monetary policy should not be excluded from the total exposure measure.

(7) It is expected that the exclusion under Article 500b of Regulation (EU) No 575/2013 until 27 June 2021 of certain central bank exposures from the total exposure measure would support credit institutions in continuing to fulfil their role in funding the real economy, while preserving the key elements of the prudential regulatory framework. The exclusion may reduce potential constraints linked to the introduction of a new requirement for own funds and eligible liabilities that was implemented in the Union as an amendment to Regulation (EU) No 575/2013 by Regulation (EU) 2019/876 in order to reflect the Total-Loss-absorbing Capacity standard, and that has been applicable since 28 June 2019. Furthermore, although the leverage ratio will not apply until 28 June 2021, the exclusion of certain central bank exposures from the total exposure measure until then could be beneficial from the perspective of clear communication of financial information. In particular, institutions would be able to disclose their leverage ratio both with and without the impact of excluded exposures. This information could be useful for financial market participants in assessing the potential future leverage ratios of institutions once the leverage ratio becomes applicable on 28 June 2021.

(8) The ECB, in its monetary policy function, was consulted in accordance with Article 500b(2) of Regulation (EU) No 575/2013 on the determination of exceptional circumstances warranting the exclusion pursuant to Article 500b(1) of that Regulation ([5]),

HAS ADOPTED THIS DECISION:

Article 1

Definitions

The terms used in this Decision shall have the same meaning as the terms defined in Regulation (EU) No 575/2013 and the following definitions shall also apply:

(1) 'Eurosystem' means 'Eurosystem' as defined in Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60) ([6]);

(2) 'deposit facility' means a deposit facility as defined in Guideline (EU) 2015/510 (ECB/2014/60);

(3) 'reserve account' means a reserve account as defined in Regulation (EC) No 1745/2003 of the European Central Bank (ECB/2003/9) ([7]);

(4) 'minimum reserve requirements' means the minimum reserve requirements as calculated in accordance with Regulation (EC) No 1745/2003 (ECB/2003/9);

([5]) https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200917~f3f03398d2.en.html

([6]) Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

([7]) Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9) (OJ L 250, 2.10.2003, p. 10).

(5) 'significant supervised entity in a euro area Member State' means a significant supervised entity in a euro area Member State as defined in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ([8]).

Article 2

Determination of the existence of exceptional circumstances

1. For the purposes of Article 500b(2) of Regulation (EU) No 575/2013, the ECB has determined that, subject to paragraphs 2 and 3, exceptional circumstances exist that warrant the exclusion of the central bank exposures listed in points (a) and (b) of Article 500b(1) of that Regulation from the total exposure measure in order to facilitate the implementation of monetary policies.

2. With regard to the exposures listed in point (b) of Article 500b(1) of Regulation (EU) No 575/2013 the determination in paragraph 1 shall apply to those exposures to Eurosystem central banks that relate to deposits held in the deposit facility or to balances held on reserve accounts, including funds held in order to meet minimum reserve requirements.

3. The determination shall apply in relation to any institution that is a significant supervised entity in a euro area Member State.

Article 3

Entry into force

This Decision shall enter into force on the fifth day following that of its publication in the *Official Journal of the European Union*.

Done at Frankfurt am Main, 16 September 2020.

The President of the ECB
Christine LAGARDE

([8]) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2020/1307

of 18 September 2020

on a common Union toolbox for reducing the cost of deploying very high capacity networks and ensuring timely and investment-friendly access to 5G radio spectrum, to foster connectivity in support of economic recovery from the COVID-19 crisis in the Union

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

(1) The COVID-19 crisis has shown that connectivity is essential for people and businesses in the Union. Electronic communications networks, in particular very high capacity networks, have been playing a crucial role in the response to the crisis by enabling remote working and schooling, healthcare, and personal communication and entertainment. Widespread gigabit connectivity underpins bandwidth-intensive use cases in the fields of health, education, transport, logistics, and media, which can play a key role in Europe's economic recovery. More generally, fixed and wireless connectivity contributes significantly to providing affordable and accessible services and bridging the digital divide. It offers an important means to inform the public, help relevant public authorities contain the spread of the virus and enable healthcare organisations to exchange data and to provide teleservices.

(2) The pandemic has changed the economic outlook for the years to come. Investment and reforms are needed more than ever to ensure convergence and a balanced, forward-looking and sustainable economic recovery. Investing in the Union's common priorities, notably in the areas of green, digital and social policies, will improve its resilience and help create jobs and sustainable growth, while modernising Member States' economies. Member States should therefore fully exploit the potential of the proposed recovery and resilience facility, ensuring efficient public spending and creating the conditions best suited for private investment. To that end, this Recommendation gives guidance to Member States who are in the process of designing their proposals for their recovery and resilience plans. It indicates how Member States can deploy simple and realistic measures to assign radio spectrum for the fifth generation (5G) networks under investment-friendly conditions, and how they can facilitate the deployment of very high capacity fixed and wireless networks by, for example, removing unnecessary administrative hurdles and streamlining permit granting procedures.

(3) In this socio-economic context, it is necessary to develop a common Union approach, a 'Toolbox', based on best practices. The aim is to incentivise the timely deployment of very high capacity networks, including fibre and next generation wireless networks. Such approach would support emerging and future digital processes and applications, and contribute directly to growth and employment, as part of the Union's economic recovery.

(4) The Council Conclusions on Shaping Europe's Digital Future of 9 June 2020 ([1]) stress that the COVID-19 pandemic has demonstrated the need for fast and ubiquitous connectivity. This situation calls on Member States, in close cooperation with the Commission, to develop a set of best practices to reduce the costs of network deployment and facilitate the roll-out of very high capacity infrastructures, including fibre and 5G.

(5) 5G mobile networks will bring very high capacity connectivity to mobile users. These networks are set to play a vital role in laying the basis for the digital and green transformations in areas like transport, energy, manufacturing, health, agriculture and media. The success of a number of use cases for 5G requires service continuity in substantial territories, including across national borders. It is therefore important that Member States take appropriate steps to promote deployment throughout their territories, including rural and remote areas, and cooperate with each other in the deployment of 5G in cross-border areas.

([1]) Council Conclusions on Shaping Europe's Digital Future, 9 June 2020, 8711/20. https://data.consilium.europa.eu/doc/document/ST-8711-2020-INIT/en/pdf

(6) The spectrum-related actions covered by this Recommendation may support the preparation of the future Commission's updated action plan for Europe on 5G and 6G that is announced in the Commission's Communication 'Shaping Europe's digital future' ([2]). That updated plan would take stock of progress made, address current network deployment deficiencies and set a new level of ambition for future 5G deployment at EU level, to ensure that 5G connectivity will realise its full potential to help meet the EU's longer-term goals for the digital transformation of the economy.

(7) Directive 2014/61/EU of the European Parliament and of the Council ([3]) ('the Broadband Cost Reduction Directive') aims to facilitate and incentivise the roll-out of high-speed electronic communications networks. In its report on the implementation of the Broadband Cost Reduction Directive ([4]), the Commission identified a number of problems in terms of its effectiveness, including the fact that some optional measures are not being used to their full potential by Member States. In response, this Recommendation should propose measures to incentivise the timely deployment of sustainable very high capacity electronic communications networks, including 5G networks.

(8) Directive (EU) 2018/1972 of the European Parliament and of the Council ([5]), which has to be transposed by Member States and applied from 21 December 2020, promotes connectivity and access to, and take-up of, very high capacity networks by all citizens and businesses of the Union. This Recommendation is intended to contribute to the achievement of this objective and hence focuses on the deployment of very high capacity networks.

(9) Member States should cooperate with each other and with the Commission to urgently develop a Toolbox containing best practices for the application of the Broadband Cost Reduction Directive and building up on its minimum requirements, making improvements in the following areas: (i) streamlining permit granting procedures, in the context of wider efforts for the improvement of the efficiency and transparency of public administrations and to contribute to easing business activities; (ii) increasing transparency and reinforcing the single information point; (iii) expanding the right to access existing physical infrastructure controlled by public sector bodies; and (iv) improving the dispute resolution mechanism. In addition, Member States should identify measures that would help reduce the environmental impact of electronic communications networks and ensure their sustainability.

(10) Pursuant to Article 7 of the Broadband Cost Reduction Directive, Member States need to ensure that competent authorities take decisions relating to all permits for necessary civil works, with a view to deploying elements of high-speed electronic communications networks within 4 months, extended exceptionally, in duly justified cases or to comply with other deadlines or obligations laid down in national law for the proper conduct of the procedure. To avoid inconsistent practices across the Union, Member States should therefore seek to facilitate compliance with the 4 months deadline for granting or refusing all necessary permits and should also identify together best practices that further streamline permit granting procedures, such as tacit approval and simplified permit procedures.

(11) For certain types of network deployments, some Member States have set up simplified permit procedures as a way of significantly reducing the administrative burden on both operators and national administrations. Member States should consider the use of simplified permit granting procedures or permit exemptions beyond Article 57 of the European Electronic Communication Code, as well as defining the network deployment scenarios that would benefit from these (e.g. for provisional deployments necessary to ensure the continuity of electronic communication services or for simple upgrades of existing networks, including the upgrade to 5G of existing mobile base stations).

(12) To reduce administrative burden and streamline permit granting procedures, the use of electronic procedures should be facilitated and the role of the single information point should be enhanced. To this end, Member States should reflect on how the single information point could become an effective single entry point to submit electronic applications for permits at all administrative levels.

([2]) COM(2020) 67 final.

([3]) Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155, 23.5.2014, p. 1).

([4]) Report from the Commission to the European Parliament and the Council on the implementation of Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, COM(2018) 492, 27 June 2018.

([5]) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

(13) As a further step, an integrated approach to issuing permits under the responsibility of the single information point would bring significant added value. This could operate by way of a fully coordinated procedure in cases where more than one competent authority is involved. Member States should therefore consider giving the single information point an active role in coordinating and monitoring the permit granting procedures by different competent authorities and ensuring the proper exchange of relevant information.

(14) To avoid undesirable delays, procedures for permits and rights of way, including along communication routes (e.g. roads, railways), pursuant to Article 43 of the European Electronic Communications Code, should be carried out in parallel. Member States should explore the possibility of granting rights of way as quickly as possible and, in any case, within the maximum deadline for permits of 4 months, thereby aligning this procedure with the provisions of Article 7(3) of the Broadband Cost Reduction Directive.

(15) Given the increasing number of permits for deploying electronic communications networks, and their predominantly local character, fees for permits for civil works may differ significantly between and within Member States. They may also represent a significant part of the cost of deployment, particularly in rural and remote areas, where the cost of deployment per user is highest. It would therefore be very useful if Member States were to exchange and agree on ways to keep the cost of granting permits at a level which would not be a disincentive for investment, taking into account the multiplicity of permits often required.

(16) Access to comprehensive, accurate and updated information is a prerequisite for ensuring efficient use of existing physical infrastructure and appropriate coordination of civil works. The role of the single information point is crucial in this respect. Improving the transparency of existing infrastructure and planned civil works is a key preliminary step for enabling access to existing infrastructure and enhancing coordination of civil works, which in turn generate additional benefits for the environment and individuals. Member States should therefore be encouraged to consider feeding the single information point with all the physical infrastructure information available in a given area, from different sources, and to assist in providing georeferenced information.

(17) Member States should be encouraged to explore means to improve transparency concerning existing physical infrastructure by increasing the quantity and quality of information available via the single information point. This includes information that is provided bilaterally between operators, pursuant to Articles 4(2) and 4(4) of the Broadband Cost Reduction Directive, upon request, or that concerns physical infrastructure controlled by public sector bodies.

(18) In addition to the requirements of the Broadband Cost Reduction Directive on access to existing physical infrastructure, the deployment of very high capacity networks can be further facilitated by enabling operators to obtain access to relevant physical infrastructure controlled by public sector bodies, on similar conditions as those set in Article 3 of that Directive. Such physical infrastructure would include buildings, particularly rooftops, and street furniture, such as poles for streetlights, street signs, traffic lights, billboards, bus and tramway stops and metro stations.

(19) The Broadband Cost Reduction Directive provides for recourse to dispute resolution procedures in case negotiations related to access to infrastructures fail. Member States should step up their efforts to identify together best practices for effective and efficient dispute resolution mechanisms and the good functioning of dispute resolution bodies across the Union. In the interest of transparency, these practices should include the timely publication of dispute resolution bodies' decisions.

(20) The environmental footprint of the electronic communications sector is increasing, and it is essential to consider all possible means of counteracting this trend. Incentives to deploy networks with, for example, a reduced carbon footprint can contribute to the sustainability of the sector and to climate change mitigation and adaptation. Member States are called upon, in close cooperation with the Commission, to identify and promote such incentives, which might include fast-track permit granting procedures or reduced permit and access fees for networks which meet certain environmental criteria.

(21) In order to avoid unduly delaying the processes for authorising spectrum use and the installation of wireless communications networks, Member States should exchange best practices on how to take account of the results of the environmental assessment, when this is required, and in particular when authorities prepare the framework for future development consent of projects, while fully respecting Union legislation, in particular Directive 2001/42/EC of the European Parliament and of the Council ([6]) ('Strategic Environmental Assessment Directive'), Directive 2011/92/EU of the European Parliament and of the Council ([7]) ('Environmental Impact Assessment Directive') and Council Directive 92/43/EEC ([8]) ('Habitats Directive'). The environmental assessment should take place at the stage when environmental effects can be identified and assessed.

(22) The European Electronic Communications Code sets a common deadline of the end of 2020 for the Member States to allow use of the 3,4-3,8 GHz band and at least 1 GHz of the 24,25-27,5 GHz pioneer frequency band for 5G. In addition, Decision (EU) 2017/899 of the European Parliament and of the Council ([9]) sets a common deadline of 30 June 2020 for the Member States to allow use of the 700 MHz pioneer frequency band for 5G. Member States should ensure that the management of spectrum promotes high-quality connectivity for businesses and society with a cross-border dimension, as well as the digitisation of industry, thereby generating benefits for the economy and for society as a whole, including in terms of accessibility, equal opportunity and inclusivity. The attainment of that objective could be facilitated by the timely exchange of views and best practices ahead of and within the peer review process established by the European Electronic Communications Code.

(23) In order to ensure the fast and secure deployment of 5G networks and the uptake of innovative services from 2020, in accordance with the 5G action plan ([10]), and taking into account the toolbox pursuant to the Commission Recommendation on cybersecurity of 5G networks ([11]), Member States should avoid or minimise any delays in allowing use of 5G pioneer frequency bands due to the COVID-19 crisis.

(24) Noting the importance of secure and resilient 5G infrastructure for recovery and economic growth, spectrum authorisation procedures should support, where appropriate, infrastructure investment by alleviating the financial burden on radio spectrum users, particularly on operators, in line with State aid rules. This is even more crucial under the circumstances of the COVID-19 crisis. To this end, Member States should be encouraged to identify spectrum authorisation rules that aim to apply a pro-investment spectrum pricing methodology. Such practices may cover incentives where appropriate to provide high-quality wireless coverage to ensure widely available services, including across borders.

(25) To avoid spectrum scarcity that leads to higher bids in spectrum auctions, best practices may cover measures not to reserve spectrum in 5G pioneer frequency bands for the purposes of public security and defence, as far as possible or measures to reserve EU-harmonised radio spectrum for electronic communications services for private radio spectrum users, as regards both the amount of spectrum and the choice of a specific frequency band, only when duly justified.

(26) 5G networks require a considerably denser cell deployment in higher frequency bands compared to previous technology generations. Passive and active infrastructure sharing and joint roll-out of wireless infrastructure can reduce the cost of such deployment (including incremental costs), particularly when using the 3,4-3,8 GHz and 24,25-27,5 GHz frequency bands, and thereby accelerate its pace, support increased network coverage and allow for more effective and efficient use of radio spectrum to the benefit of consumers. It should therefore be considered positively by competent authorities, in particular in areas of limited economic return.

([6]) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

([7]) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).

([8]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

([9]) Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union (OJ L 138, 25.5.2017, p. 131).

([10]) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions '5G for Europe: An Action Plan', COM(2016) 588 final.

([11]) Commission Recommendation (EU) 2019/534 of 26 March 2019 Cybersecurity of 5G networks (OJ L 88, 29.3.2019, p. 42).

(27) The deployment of dense 5G wireless networks would also benefit from flexible authorisation regimes, which stimulate investment in wireless networks and ensure efficient spectrum use. High frequency bands above 24 GHz ('mm-wave frequency bands'), such as the 24,25-27,5 GHz frequency band, offer a high amount of radio spectrum with geographically limited propagation characteristics. While Member States should generally use competitive selection procedures such as auctions to grant rights of use in frequency bands affected by scarcity, such procedures may constrain in certain cases the potential for investment in dense 5G wireless networks as well as flexibility and the resulting efficiency of spectrum use. Individual authorisation of harmonised mm-wave frequency bands that uses a fast-track administrative procedure which is open, objective, proportionate, non-discriminatory and follows transparent criteria and procedures, could be considered as a best practice.

(28) In order to avoid divergent solutions when granting rights to use radio spectrum to provide cross-border wireless services, Member States should coordinate better when assigning radio spectrum so as to foster wireless connectivity that will support the Union's industrial transformation and digital sovereignty based on the flexible, multi-service capabilities of 5G infrastructure. Coordinated spectrum assignment is particularly important to meet the connectivity requirements of new use cases that contribute to the digitalisation of operations in road and rail mobility and transport and industrial manufacturing. These conditions relate particularly to quality of service, expressed in terms of capacity, throughput, latency, reliability and network security and resilience.

(29) To this end, the Member States should contribute to a set of best practices and agree thereupon, in close cooperation with Commission and with the support of the Radio Spectrum Policy Group, for major innovative examples in industry sectors with a cross-border dimension, such as road or rail transport (including cross-border corridors for cooperative, connected and automated mobility) and smart factories. Such practices could take advantage of the results from EU-funded pilots and trials in vertical sectors including 5G cross-border corridors. Such practices should identify relevant common frequency ranges, authorisation regimes and conditions for operators for the provision of dedicated (sectoral) wireless services. Common authorisation regimes could address individual authorisation of operators and industrial stakeholders, including shared spectrum use. Common authorisation conditions could address roll-out, quality of service, shared spectrum use, coexistence between wireless systems, spectrum hoarding, cybersecurity, and negotiated agreements between mobile operators and industrial stakeholders as well as measures to protect essential communications for air transport. In this regard, the Radio Spectrum Policy Group should assist the Commission to determine if there is a need to issue a mandate to the European Conference of Postal and Telecommunications Administrations for developing harmonised technical conditions for spectrum use.

(30) Member States should coordinate the spectrum authorisation process and, in particular, make use of a joint authorisation process in accordance with Article 37 of the European Electronic Communication Code when implementing the set of best practices developed by the Member States in cooperation with the Commission. Such a process may include the assignment of a common dedicated frequency range under common authorisation conditions.

(31) The implementation of the Toolbox would benefit from a clear process, adequate monitoring, increased transparency and dialogue at national and Union level.

(32) Member States should work together, and in close cooperation with the Commission, to develop the Toolbox. Where appropriate, the Radio Spectrum Policy Group, the Body of European Regulators for Electronic Communications and national regulatory authorities, the Broadband Competence Offices network, dispute settlement bodies and the competent authorities in charge of the functions of the single information point should be closely involved.

(33) This Recommendation is without prejudice to the application of competition law and State aid rules,

HAS ADOPTED THIS RECOMMENDATION:

1. PURPOSE AND DEFINITIONS

1. This Recommendation sets out guidance for developing best practices, referred to as the 'Toolbox', for fostering connectivity in support of economic recovery from the COVID-19 crisis, with a focus on three areas that aim, in particular, to:

   (a) reduce the cost and increase the speed of deploying electronic communications networks and, in particular, very high capacity networks, by streamlining permit granting procedures for civil works, improving transparency and reinforcing the capabilities of the single information point(s) established by the Broadband Cost Reduction Directive, expanding access rights to existing physical infrastructure controlled by public sector bodies and identifying measures that would help reduce the environmental impact of electronic communications networks;

   (b) provide where appropriate, timely and investment-friendly access to 5G radio spectrum through pro-investment incentives for spectrum use as well as timely spectrum assignment procedures for 5G pioneer bands;

   (c) establish a stronger coordination process for spectrum assignment, which also facilitates the cross-border provision of innovative 5G services.

2. For the purposes of this Recommendation, the definitions set out in the Broadband Cost Reduction Directive and in the European Electronic Communications Code apply.

2. PROCESS FOR DEVELOPING A TOOLBOX

3. Member States should work together, and in close cooperation with the Commission, to develop a Toolbox in the areas covered in Sections 3, 4 and 5 of this Recommendation. Where appropriate, the following should be involved:

   (a) the Body of European Regulators for Electronic Communications as well as national regulatory authorities, the Broadband Competence Offices network 0and the competent authorities in charge of the functions of the single information point with regard to the areas identified in Section 3;

   (b) the Radio Spectrum Policy Group and competent national regulatory authorities with regard to the areas identified in Sections 4 and 5.

4. By 20 December 2020, Member States should identify and share between themselves and with the Commission best practices pursuant to Sections 3 and 4.

5. By 30 March 2021, Member States, in close cooperation with the Commission, should agree on the Toolbox.

6. Member States should implement the Toolbox as a matter of urgency and in close cooperation with other Member States, the Commission and other relevant stakeholders.

7. To ensure transparency and facilitate the exchange of good practices between Member States, the Toolbox and any related information that has been reported should be made public on the Europa website and via the single information points.

3. ENHANCED COORDINATION AT UNION LEVEL ON REDUCING THE COST AND INCREASING THE SPEED OF DEPLOYING VERY HIGH CAPACITY NETWORKS

Streamlining permit granting procedures

8. Member States should develop and agree on best practices to further streamline permit granting procedures beyond the scope of the Broadband Cost Reduction Directive as defined in Article 1 therein, and to facilitate compliance with the deadline and other conditions set in Article 7(3) of the Broadband Cost Reduction Directive. In particular, Member States should explore how:

   (a) to facilitate compliance with the maximum deadline of 4 months for granting or refusing permits. To increase legal certainty and to help reduce administrative burden, in the absence of an explicit decision within the four-month period, Member States should consider tacit approval of the application;

(b) to simplify and streamline permit granting procedures, including setting up fast-track permit granting procedures and/or permit exemptions where appropriate, and defining the type of network deployments that could benefit from these;

(c) to provide operators with the right to submit, by electronic means via the single information point, applications for all the necessary permits required for civil works to deploy elements of very high capacity networks;

(d) to establish the single information point as a single entry point for submitting applications for such civil works. To that end, the single information point could be required to play an active role in coordinating and monitoring permit granting procedures at all administrative levels. It could also be required to facilitate the exchange of information on the progress of these procedures between the applicants and the competent authorities, including communicating the decision issued by the competent authority(ies) to the applicant.

9. Member States should also consider best practices to facilitate the granting of rights of way provided in Article 43 of the European Electronic Communications Code where these are required for the deployment of elements of very high capacity networks. Such best practices should ensure that where the deployments of such network elements require both civil works permits and rights of way, competent authorities grant or refuse the necessary permits in parallel within maximum 4 months from the application.

10. Member States should exchange and agree on best practices to ensure that fees charged for the granting of permits for civil works that are needed to deploy very high capacity networks are objectively justified, transparent, non-discriminatory and proportionate to their intended purpose, and that they cover only the administrative costs incurred for the provision of such permits.

Improving transparency through the single information point

11. Member States should develop appropriate best practices to improve transparency concerning physical infrastructure, so that operators can access more easily all relevant information on the infrastructure available in a certain area. To that end, Member States should consider strengthening the role of the single information point and extending its functions to include, for example, georeferenced information (maps and digital models) and integrating information from different sources (in particular, information provided by competent national authorities at any level, public sector bodies and network operators).

12. Member States are encouraged to develop best practices to ensure that the information referred to in Article 4(1) of the Directive, when held by public sector bodies, is made available via the single information point in electronic format. In addition, Member States should consider making available through the single information point information concerning physical infrastructure beyond the minimum specified in the Directive, such as the georeferenced location of the infrastructure, its digital model, its type and current use, or its total and spare capacity.

13. To further improve the quantity and type of information available via the single information point, Member States should consider requiring network operators to make available via the single information point, and in electronic format, the information concerning their existing physical infrastructure which they have made available to other operators upon specific request.

Expanding the right of access to existing physical infrastructure

14. To increase the number and types of facilities available to operators for the deployment of elements of very high capacity networks, Member States should develop best practices for enabling operators to obtain access to physical infrastructure (including buildings and street furniture) controlled by public bodies, which is capable of hosting very high capacity network elements, on similar conditions as those set in Article 3 of the Broadband Cost Reduction Directive.

Dispute resolution mechanism

15. Member States should develop best practices in order to improve the effectiveness and efficacy of the dispute resolution mechanism in regard to disputes related to access to physical infrastructure and the functioning of dispute resolution bodies, with a view to solving related issues within the shortest possible timeframe and providing guidance to parties on appropriate conditions and charges, including by the timely publication of their decisions.

Reducing the environmental footprint of networks

16. Member States are encouraged to develop best practices to incentivise the deployment of electronic communications networks with a reduced environmental footprint, particularly with respect to energy use and related greenhouse gas emissions, including:

    (a) the criteria for assessing the environmental sustainability of future networks;

    (b) the incentives provided to operators to deploy environmentally sustainable networks.

Environmental impact assessment

17. Where Union legislation, in particular Directive 2001/42/EC ('Strategic Environmental Assessment Directive'), Directive 2011/92/EU ('Environmental Impact Assessment Directive') and Directive 92/43/EEC ('Habitats Directive'), requires an impact assessment, and in particular when authorities prepare the framework for future development consent of projects, Member States should exchange best practices on how to perform and take account of the results of the environmental assessment, at the stage when environmental effects can be identified and assessed, such as when operators present overall plans for projects entailing concrete installation or deployment of networks.

4. ACTION AT NATIONAL LEVEL TO ENSURE TIMELY AND INVESTMENT-FRIENDLY ACCESS TO 5G RADIO SPECTRUM

Schedule of spectrum authorisation procedures

18. Without prejudice to any assessment of *force majeure* under Union law, Member States should ensure that any postponement of procedures to grant rights to use radio spectrum due to the COVID-19 crisis is kept to a minimum and lasts only for as long as is necessary to prevent or contain the spread of COVID-19. Member States should update accordingly any relevant national spectrum roadmap.

19. Member States should request a Peer Review Forum pursuant to Article 35 of the European Electronic Communications Code to examine in advance draft measures for granting rights of use of spectrum within the 700 MHz, 3,4-3,8 GHz and 24,25-27,5 GHz frequency bands, with a view to exchanging best practices.

Incentives for investment

20. To take stock of incentives for radio spectrum users to invest substantially in the roll-out of 5G networks, Member States should inform the Commission, in particular through the Radio Spectrum Policy Group, about specific measures which they consider to be best practices including those which have been implemented or are planned for implementation at national level when authorising radio spectrum in the 700 MHz, 3,4-3,8 GHz and 24,25-27,5 GHz frequency bands.

    In particular, Member States should report on any relevant measures which have as their objectives:

    (a) promoting adequate reserve prices which reflect the minimum levels of fees for rights of use of radio spectrum;

    (b) avoiding spectrum scarcity by ensuring the assignment of the full amount of radio spectrum harmonised at Union level;

    (c) providing in a non-discriminatory manner the possibility that fees for rights of use of radio spectrum are paid in instalments within the period of those rights;

    (d) using an individual authorisation regime for the 24,25-27,5 GHz frequency band which promotes its timely use including, in particular, one that is based on fast-track administrative procedures when applied to geographically limited rights of use;

    (e) combining financial incentives with obligations or formal commitments to accelerate or to expand high-quality wireless coverage;

    (f) providing, subject to competition law, the possibility for the sharing of passive and active infrastructure, as well as for joint roll-out of infrastructure that relies on the use of radio spectrum.

5. ENHANCED COORDINATION AT UNION LEVEL ON SPECTRUM ASSIGNMENT FOR CROSS-BORDER USE

21. To promote coherent practice for granting rights of use for radio spectrum to operators to deploy next-generation (including 5G) wireless infrastructure for cross-border industrial use, Member States should develop and agree on best practices as part of the Toolbox in this regard, including on:

    (a) identification of use cases with a cross-border dimension, particularly for road transport, rail transport and industrial manufacturing, in line with Union priorities ([12]) on 5G deployment;

    (b) for each use case identified, identification of a common dedicated frequency range in conjunction with the appropriate common authorisation regime, as well as the conditions attached to such authorisations, which are necessary to ensure service continuity across borders, including but not limited to quality of service and network security.

22. Member States are invited to use the best practices of the Toolbox referred to in point 21 with respect to relevant users on their territory, with a particular view to jointly establishing the common aspects of and conducting a joint authorisation process pursuant to Article 37 of the European Electronic Communications Code by 30 March 2022.

6. REPORTING

23. By 30 April 2021, each Member State should provide the Commission with a roadmap for the implementation of the Toolbox.

24. By 30 April 2022, each Member State should report on the implementation of the Toolbox.

Done at Brussels, 18 September 2020.

For the Commission
Thierry BRETON
Member of the Commission

([12]) See in particular Commission Communications COM(2016) 587 and COM(2020) 67.

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