7 February 2025
ESMA91-1505572268-4198

Reply form

Consultation Paper on a draft RTS on the conditions for extensions of authorisation and the list of documents for applications for initial authorisations and extensions of authorisation under EMIR (Articles 14(6), 15(3), 17a(5) and 15a(2) of EMIR)

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **7 April 2025.**

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_EXTE_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_EXTE_nameofrespondent.

  For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_EXTE_ABCD.
- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and heading 'Data protection'..

1. General information about respondent

Name of the company / organisation	Deutsche Börse Group, including Eurex Clearing AG and European Commodity Clearing AG
Activity	Central Counterparty
Are you representing an association?	☐
Country/Region	Germany

2. Questions

Q1 Do you agree with the parameters to consider in relation to condition (a)? Are there any other parameters regarding condition (a) that should be considered?

<ESMA_QUESTION_EXTE_1>

As both CCPs of Deutsche Börse Group (DBG), Eurex Clearing AG and European Commodity Clearing AG, will be subject to the new approval procedures as specified by ESMA, we are responding with a joint group statement. As such, DBG welcomes the opportunity to respond to ESMA's consultation on the proposed draft RTS for validation under Articles 14(6), 15(3), 17a(5) and 15a(2) of EMIR.

We strongly support the political objectives of EMIR 3.0 to enhance the efficiency and thereby the attractiveness and competitiveness of EU CCPs by establishing swifter approval procedures for the extension of authorisation. Clear timelines for material changes under the regular procedures, the introduction of an accelerated procedure for non-material changes and the formal exemption of minor or so called "business-as-usual" (BAU) changes should allow EU CCPs to launch service and product extensions more quickly and bring the EU regime closer to other jurisdictions. While we nevertheless had some reservations about the narrow conditions contained on Level 1, we believe that the further specifications of the respective conditions on Level 2 will significantly determine the effectiveness of the new procedures in practice.

We broadly agree with many proposals in the ESMA draft RTS, however, we respectfully consider some elements of the consulted draft RTS to be too prescriptive. In particular, based on the narrow definitions contained in the draft RTS, most extensions of services or activities would be considered material, be subject to the regular approval procedure and could not benefit from the accelerated process for non-material extensions. Further, minor or BAU changes, which under the status quo would not have gone through any approval procedure, would under the narrow definitions for the exemption at minimum fall under the accelerated process.

In addition, some documentation requirements appear unproportionally extensive in relation to the change and would require significant effort for preparing the application. The documentation requirements for the regular procedure are almost as broad as they are for initial authorization while changes falling under the accelerated approval would still require more documentation than had been the case for changes falling under Article 15 EMIR 2.2.

As a result, the new approval procedures would not meet the political objectives of EMIR 3.0 of enhancing the time-to-market of EU CCPs, but risk decreasing the ability of CCPs to launch services and product extensions more swiftly compared to EMIR 2.2.

We therefore appreciate the opportunity to provide ESMA with targeted counterproposals in our consultation response, which in conjunction aim at improving the efficiency for the approval procedures for both authorities and CCPs and coming closer to the intended goal of EMIR 3.0. In a nutshell, we would propose to

I) adequately balance the classification of extensions across material (Article 17) and non-material extensions (Article 17a) by loosening the extremely narrow parameterization of conditions for Article 17a(1) (see our response to Q1-Q5);
II) extend the scope of exemptions of authorization that would not fall under Article 17 and Article 17a procedures (see our response to Q6 and Q8-Q9); and
III) reduce the documentation requirements for extensions to ensure they are more proportional in relation to the foreseen extension (see our response to Q19-Q20).

The outcome of such a more proportional approach would be a more meaningful and risk-sensitive balance between ex-ante approvals of material and non-material extensions vs ex-post reviews of BAU extensions. Authorities would still have sufficient insights and control of such exempted cases as they would be reported regularly via the frequent notification requirement, and would go through ex-post review through the comprehensive annual review foreseen under Article 21. Overall, this approach would also still extend the number of extensions of authorizations subject to ex-ante approval procedures compared to the previous regime under EMIR 2.2. Nevertheless, the classification of extensions would be more balanced across the three categories and recognize the need for minor extensions of CCP services and activities. In conjunction with more proportional documentation requirements, the overall outcome would significantly ease the burden for extensions of services and activities for the affected CCPs, NCAs, and ESMA alike – while still resulting in a broader and more robust approach to extensions of authorizations compared to EMIR 2.2.

With regard to Q1, we would like to more concretely highlight the above-mentioned concerns of too prescriptive definitions of some conditions, as we have concerns about the parameters to consider in relation to condition (a). Point a. is too narrowly drafted and in addition leaves substantial room for interpretation of the term “contracts with the same risk characteristics”. Instead,

we propose this is defined using the class of derivatives as already defined in the legislation and praxis, e.g. in the ESMA register[1], e.g. equity, debt, interest rate, credit, etc.

We broadly agree with point b of the consulted RTS.

<ESMA_QUESTION_EXTE_1>

Q2 Do you agree with the parameters to consider in relation to condition (b)? Are there any other parameters regarding condition (b) that should be considered?

<ESMA_QUESTION_EXTE_2>

While we understand that it may be difficult to operationalize the Level 1 condition taking into account the different structures of CCPs and the need to maintain a level playing field, we disagree with the current wording of Article 3 of the Draft RTS.

First, the way that the "liquidation process" is defined under Article 3 (2) is too stringent and, thus, not operable. It confuses the design of the liquidation process when a product is launched, versus the execution of the process on D-day. Especially, it is not possible to always know in advance if two products will be sold in the same auction. For example, even the same product could be part of different auctions in the same process if it is the best approach (e.g., for hedgeability between different positions on other products). Such approach would prevent the CCPs from applying the necessary discretion when designing the hedging and liquidation strategy upon a termination event, that can adapt to the given circumstances, as it forces CCPs to take a stand on which products will be part of which auction ex-ante. Additionally, CCPs generally consider that several auction processes form part of the same liquidation process. Thus, we also disagree with *Article 3 (1), point (a).*

In addition, we disagree with Article 3 (1), point (b) due to the following two-fold rationale:

Article 17a (1), point (b) of the Regulation, which Article 3 of the Draft RTS is specifying, refers to the liquidation process, i.e., how contracts are supposed to be liquidated, and not the default waterfall structure, which defines the loss absorption mechanisms and not the rebalancing mechanisms. Thus, any reference to "the introduction of a new default fund or the segmentation or compartmentalization of the existing default fund" and to the concept of "liquidation group" (which is a concept defined by some specific CCPs for internal purposes and whose definition can change and is tied to a specific default waterfall structure) falls outside the mandate of the respective

[1] ESMA70-148-2567 List of Central Counterparties authorised to offer services and activities in the Union

Article of the Regulation, and, as such, is circumventing the notion of the Regulation and shall, thus, be removed from Article 3 of the Draft RTS.

In addition, we believe that “the introduction of a new liquidation group” -or any equivalent at other CCPs- shall not prevent the application of the accelerated procedure of Article 17a of the Regulation. Indeed, the current provision sets the wrong incentives for CCPs, since they would rather be incentivized to integrate any new products they might aspire to launch into the already existing liquidation groups so that they become eligible to fall under the scope of the accelerated procedure.

We would additionally point out that the logical connection “and” applied in the proposal from ESMA requires both points to be valid simultaneously for the accelerated procedure to be applied, while the Article of the Level 1 text intends for any of the condition to be sufficient individually (i.e., ”or”).

In summary, we are highly concerned that the proposal as drafted by ESMA would simply not be enforceable in practice as drafted:

- It extends beyond the mandate given to ESMA, due to the logical connector used contrary to the Level 1 Article, and due to the introduction of conditions on the default waterfall
- It is based on the definition of a liquidation process only applicable once the default occurs, and therefore not applicable when a product is launched
- It relies on definitions that are specific to certain CCPs and can therefore change with time or may be subject or interpretation

Therefore, we are proposing that the current Article 3 of the Draft RTS shall be replaced as per below:

“The parameters to consider when assessing whether the condition set out in Article 17a(1), point (b), of Regulation (EU) 648/2012 is fulfilled are either of the following:

a) When designing its Liquidation Process of this contract, the CCP expects to be generally able to include this contract into existing auction or direct sales portfolios, or

b) No new liquidation mechanisms are introduced specifically for these contracts when the extension is requested. A new mechanism means:

i. The introduction of an auction mechanism where no auction mechanism exists.

ii. The introduction of new auction formats (e.g., multi-unit auction, a multi-asset auction, single-unit auction) where only other formats exist.

iii. The introduction of direct sales when direct sales mechanisms do not exist.

iv. The introduction of order book or RFQ mechanism when neither exist.

v. *The complete automation of the liquidation when all default management processes of the CCP currently rely on at least one human intervention.*

vi. *The introduction of a Hedging Mechanism when no hedging phase is applicable to any products of the CCP."*

<ESMA_QUESTION_EXTE_2>

Q3 Do you agree with the parameters to consider in relation to condition (c)? Are there any other parameters regarding condition (c) that should be considered?

<ESMA_QUESTION_EXTE_3>

While we understand that it may be difficult to operationalize the Level 1 condition in the absence of an existing definition of the terms "contracts" and "types of derivatives" or further guidance by the European Commission, we are concerned about the lack of clarity and potentially too narrow interpretation of the term "contracts".

We believe the distinction between OTC and exchange traded derivatives for the purposes of approval procedures is less relevant. There is little reason why clearing a "futurized" OTC contract should immediately elevate the extent of approval procedure if a CCP already clears OTC contracts with similar risk characteristics. For instance, in point a. the text states "(...) where it currently clears **these** contracts(...)."

For that reason, we recommend referring to a category already used when maintaining the ESMA register.

In this context, we have particular concerns with point b. Even if contracts are clarified as proposed by us above, point b would mean that a CCP clearing futures and options on several classes of financial instruments as well as futures on one other class of financial instruments, would need to apply for a full authorisation process to clear options in that class.

In case "contracts" was to be interpreted more narrowly than proposed by us, this could potentially capture large set of product introductions into the scope of Article 17 and either slow down or deter the CCP from introducing them.

Point c appears to be difficult to understand and it leaves space for interpretation. We would propose to reformulate as "The CCP intends to clear contracts that do not require introduction of new liquidity or payments arrangements due to settlement in a new currency". The text should be clear that contracts which do involve settlement in a new currency but do not require introduction of new liquidity or payment arrangements are considered to be non-material. In fact, the addition of new currencies which are freely convertible could very well be described as BAU activities.

Regarding the switch from bilateral to multilateral mentioned in the consultation under 16 a) ii), also standardization and fungibility should be considered. Bilaterally traded contracts that show a sufficient level of standardization and hence create fungibility should qualify for the accelerated application.

<ESMA_QUESTION_EXTE_3>

Q4 Do you agree with the parameters to consider in relation to condition (d)? Are there any other parameters regarding condition (d) that should be considered?

<ESMA_QUESTION_EXTE_4>

We note that the recital does not contain ESMA's considerations that led to these parameters; thus, in some cases they appear rather arbitrary. In particular, we believe that in regard to Article 5(1) of the draft RTS:

- Point a: For both described cases the risk is "default risk". We believe that an authorization to handle default risk can be extended from sovereign issuers to corporate and vice versa and as a result such cases should either fall under the accelerated procedure or even exemption from ex-ante authorisation.
- Point b: The extension from indices to single names should not require an authorization, at all. The extension from single name to index should qualify for the accelerated application.
- Point c: A CCP that manages Equity and Equity Index derivatives is already exposed to volatility, dividends and correlation. These elements should not be considered additional or new risk factors.
- Point d: Currencies that are freely convertible should qualify for the exempted procedure as mentioned in the response to Q3.

<ESMA_QUESTION_EXTE_4>

Q5 Do you agree with the parameters to consider in relation to condition (e)? Are there any other parameters regarding condition (e) that should be considered?

<ESMA_QUESTION_EXTE_5>

We believe that as long as the new settlement system is integrated into the existing clearing mechanism the extension should qualify for the accelerated application. Only if the new link results into changes to the clearing mechanism it should be relevant for the regular application.

<ESMA_QUESTION_EXTE_5>

Q6 Do you agree with the proposed list of typical extensions that could be considered in principle to fall under the accelerated procedure under Article 17a of EMIR? Would you propose to add/remove/modify/further specify any?

<ESMA_QUESTION_EXTE_6>

In our view, the examples provide the most striking indication that the types of initiatives that were not within the scope of the approval procedure due to low significance under EMIR 2.2 would now be included into the scope of approval procedures (albeit accelerated procedure). We note that should this definition of non-material changes be introduced into the RTS, it will have the opposite effect to the stated intention of changes to approval procedures brought in EMIR 3.0. Instead of putting some less material product introductions that were previously deemed significant extensions of authorisation into the bucket of accelerated procedure, EMIR 3.0 would have instead moved many of the previous BAU activities into the scope of the accelerated procedure.

In general, we consider points a) to h) in Article 7 of the draft RTS as examples of BAU activities, instead of typical extensions that could be considered in principle to fall under the accelerated procedure under Article 17a. Those examples should hence rather be considered as typical BAU cases in context of Article 10.

A few specific comments to explain why we consider the provided examples in Article 7 as BAU extensions (non-exhaustive):

- *Clearing IRS in "currency A" when already clearing IRS in other currencies and already handling payments in "currency A"* - it is unclear why an ordinary product launch where the CCP doesn't need to adapt its policies and procedures would require an accelerated procedure.
- *Clearing covered bonds, when already clearing corporate bonds in the same currency* – firstly, the distinction between covered and unsecured bonds does not appear to come out of conditions in the regulation or other conditions in CDR. Secondly, the condition is further narrowed down by "when already clearing corporate bonds in the same currency" instead of "when already clearing corporate bonds and the introduction does not require new liquidity or payment arrangements".
- *Clearing equity futures in "Currency C" when already clearing equity futures in other currencies, and already handling payments in "currency C"* - again, it appears this is likely an extension that falls well into the existing frameworks of the CCP and doesn't introduce new risks or need for new liquidity arrangements which is a typical BAU change which should not be pulled into the scope of approval processes under accelerated procedure.
- *Clearing foreign exchange futures on a new currency pair without pegging/convertibility risks and not generating payments in a new currency, when already clearing foreign exchange futures* – we really struggle to find why, with all the additional caveats included, adding a new currency pair would be considered anything else than BAU for a CCP which already clears foreign exchange futures.

In our opinion, the following examples should instead be considered as extensions that could be considered in principle to fall under the accelerated procedure:

- Connection of a payment or settlement infrastructure, which is not in line with the existing framework of the CCP for the connection of such as outlined in Q5 and Q8.
- Extension of clearing hours of the CCP, which require a change in the risk management processes as mentioned in Q8.
- Extension of clearing services to a new geographical zone, which requires an exemption to the existing framework of the CCP for clearing member jurisdictions as mentioned in Q8 as well.
- Extension of option pay off to "light exotic" pay off such as barrier of forward start.
- A "futurized" OTC contract provided the asset class authorization is already granted as alluded to in Q3.
- Bilaterally traded contracts that show a sufficient level of standardization and hence create fungibility should qualify for the accelerated application, too, as outlined in Q3.
- Extension involving settlement in a new currency but not requiring introduction of new liquidity or payment arrangements as mentioned in Q3.
- The extension from a single name derivative to an index derivative as outlined in Q4.
- As outlined in Q4 above, we also believe that an authorization to handle default risk can be extended from sovereign issuers to corporate and vice versa and as a result such cases should fall under the accelerated procedure.

<ESMA_QUESTION_EXTE_6>

Q7 Do you agree with the procedure for the consultation of ESMA and the college on whether an application for an extension of authorisation qualifies to be assessed under the accelerated procedure under Article 17a of EMIR?

<ESMA_QUESTION_EXTE_7>

We consider the procedure for consulting ESMA and the college on the question of whether an application for an extension of authorisation qualifies to be assessed under the accelerated procedure under Article 17a of EMIR to be appropriate.

<ESMA_QUESTION_EXTE_7>

Q8 Do you agree with the list of conditions for the exemption from authorisation under Article 15a of EMIR? Should any other conditions be considered?

<ESMA_QUESTION_EXTE_8>

Considering that the threshold is a "material impact on the CCP's risk profile," we consider the list of conditions to be significantly too narrow. Suffice to say that the extension would need to satisfy jointly 7 conditions in addition to all conditions set out in Article 17(a)(1) and then further specified in the draft RTS under Article 17a(5). We have previously commented, in reply to Q6, that we

consider the examples provided to be examples that would be BAU extensions and hence be exempted from authorisation. We shall briefly comment on the additional 7 conditions proposed (points b. to h.)

- Point b.: A case could be made that CCP introducing for the first time either European, American or Bermudan option exercise style should seek authorization. However, the presented example narrows it further to the use in 'equivalent existing derivative contracts'. We are concerned this narrowing in definition will (a) be open to interpretation and (b) is arbitrary and not justified by risk concerns as the CCP evidently is by then able to handle the respective exercise style in its risk framework. Overall, exercise styles are all similar activities, and our proposal would be to simplify and consider these as BAU extensions which can be notified ex-post under the exempted procedure.
- Point c: In our view this point is again significantly extending the scope of approval procedures to detailed characteristics of the cleared products and appears to consider not only binary distinction between secured and unsecured products (concern raised in response to Q6) but also extending the granularity where any variation in either seniority or collateralisation arrangements would require approval. Seniority can already be part of the risk model, if "default" risk is considered.
- Point d: In our view, an extension of the clearing hours of the CCP should fall under the exemption as long as there is no change in the risk management and clearing services, i.e. text should read "significant extension of CCP's clearing hours with a change to the risk management approach compared to existing clearing hours". A similar consideration applies to the extension of clearing services to new geographical zones. This should only be in scope of the accelerated process in case the extension of the clearing service to a new geographical zone changes the risk management approach and is not in line with the framework for new clearing member jurisdictions.
- Point e: We broadly agree that clearing new contracts that generate payments in a new currency is a reasonable candidate for an accelerated procedure but would consider that freely convertible currencies should be exempted from ex-ante procedures, as mentioned previously.
- Point f: We are concerned about special reference to currency as an underlying and specifically that it should trigger the approval procedure. For CCPs clearing e.g. derivatives on interest rate or foreign exchange, clearing new currency as an underlying is a BAU extension of existing policies and frameworks. Please note that this is different from introducing payments in a new currency which is already covered in point e.
- Point g. Any new links to a securities settlement system, CSD or payment system should be regarded as BAU as long as the connection is in the with the existing framework/criteria for the connection of payment and settlement locations.
- Point h. While we agree with the fact that introducing commercial bank settlement or payment where the CCP currently only uses settlement or payment in central bank money increases risk and therefore should be subject to an accelerated procedure, we do not agree with the vice versa of the situation. We therefore suggest that the introduction of central bank settlement or payment where the CCP currently only uses settlement or payment in commercial bank money decrease risk and should therefore be subject to the exempted procedure (i.e. BAU).

<ESMA_QUESTION_EXTE_8>

Q9 Do you consider that any other extensions/situations should be captured under the exemption from authorisation under Article 15a of EMIR? If yes, could you please specify which exact extensions/situations?

<ESMA_QUESTION_EXTE_9>

Please see our responses to the previous questions where we elaborate why the following additional elements should be considered exempted in principle, too, as they do not have a material impact on a CCP's risk profile:

- The extension from contracts on sovereign issuers to contracts on corporate issuers should be exempted as the modelling of default risk is already available (see response to Q4)
- The introduction of a new liquidation group or sub-group should be exempted: introduction of separate liquidation group limits portfolio margining offsets and is not different than not offering inter-product offsets in SPAN-like models.

<ESMA_QUESTION_EXTE_9>

Q10 Question for CCPs: Based on the proposals presented in this Consultation Paper, could you provide an estimate of the number of extensions of authorisation, implemented/applied for by your CCP over the past three years, that would have qualified for i) the standard procedure under Article 17 of EMIR, ii) the accelerated procedure under Article 17a of EMIR, iii) the exemption from authorisation ('BaU' changes) under Article 15a of EMIR?

<ESMA_QUESTION_EXTE_10>

While we overall welcome the introduction of the accelerated procedure as part of EMIR 3.0, our expectation had been that some submissions that previously went through the "standard" procedure could profit from the accelerated procedure under EMIR 3.0, thereby leading to a net reduction of the burden of NCAs, ESMA and EU CCPs while increasing the time to market for new products and services.

However, under the current RTS draft we expect instead that we would need to submit cases under the accelerated procedure that previously would not have been subject to approval at all, while cases that already had been subject to approval remain subject of the "standard" process. Hence, we would expect an increase of cases subject to the approval procedures, while relatively few cases would benefit from the exemption.

We would like to further highlight that CCPs will be incentivized to refrain from making minor changes to avoid the burdensome approval process and the comprehensive documentation requirements, as is further highlighted under the Q19 and Q20 of this paper.

<ESMA_QUESTION_EXTE_10>

Q11 Do you agree with the proposed frequency for the reporting of the exemption from authorisation under Article 15a of EMIR?

<ESMA_QUESTION_EXTE_11>

We broadly agree with the proposed frequency of reporting given that this is also foreseen on Level 1, but note that the requirement introduced in EMIR 3.0 increases the reporting burden and thus the cost basis for the CCPs.

<ESMA_QUESTION_EXTE_11>

Q12 Are the general provisions in Chapter I (of Title III of the draft RTS) (language, certification, fees) appropriate and clear?

<ESMA_QUESTION_EXTE_12>

Yes, the general provisions are almost clear. However, considering the two-tier board structure of some CCPs with a supervisory board and a management board, we would appreciate a clarification that the certification of the “CCP’s board” does not refer to the supervisory board but to the management board. We would therefore prefer if either the management board is explicitly referenced or a less ambiguous term such as “executive management” is used.

<ESMA_QUESTION_EXTE_12>

Q13 Is the requirement to submit an index and a correspondence table appropriate and clear?

<ESMA_QUESTION_EXTE_13>

The requirement is appropriate and clear.

<ESMA_QUESTION_EXTE_13>

Q14 Are the documents and information required in relation to the identification of the applicant CCP clear? Would those be enough for competent authorities and ESMA to gain sufficient understanding about the applicant CCP as a company?

<ESMA_QUESTION_EXTE_14>

We consider the requested documents and information to be clearly defined and sufficient to enable the competent authorities to form a comprehensive understanding of the applicant CCP as a company, thereby facilitating a legally sound decision.

<ESMA_QUESTION_EXTE_14>

Q15 Should applicant CCPs provide other documents under the general information requirements?

<ESMA_QUESTION_EXTE_15>

We deem the documents requested under the general information requirements to be adequate.

<ESMA_QUESTION_EXTE_15>

Q16 Are documents and information required to assess organisational requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_16>

We deem the documents and information requested for evaluating the group's structure to be adequate and consistent with comparable requirements under other regulations.

<ESMA_QUESTION_EXTE_16>

Q17 Are documents and information required to assess conduct of business requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_17>

We deem the documents requested to be adequate.

<ESMA_QUESTION_EXTE_17>

Q18 Are documents and information required to assess prudential requirements sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_18>

We deem the documents requested to be adequate.

<ESMA_QUESTION_EXTE_18>

Q19 Are documents and information required to assess an extension of authorisation, under Article 17 of EMIR, sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_19>

We note that the ESMA proposal is extremely broad in scope and disproportionate in its document requirements. The proposal would effectively mean that a mere extension of authorization would require almost the same application process as the initial authorization request under EMIR Article 14.

Further, given the broad definition for material extensions, we expect a larger number of extensions to be classified as material – as very likely one of the extremely narrow conditions will be met most of the time. Moreover, extensions that we would view as minor BAU extensions would mostly be classified as non-material extensions and would consequently also be subject to the Article 17a process. Further, the excessive assessment requirements for all classifications of extensions would lead to a significantly increased burden for extensions that would affect CCPs, NCAs as well as ESMA. Overall, this outcome would have the opposite effect of what EMIR 3.0 initially intended, namely the acceleration of the approval procedures and increased global competitiveness of EU CCPs.

If the EMIR RTS is realized (largely) unchanged to the draft proposal, the optimal response of CCPs will likely be to limit extension applications to blockbuster product launches only – i.e. products with a very high chance to generate high clearing activities and are associated with very limited risks. The remainder of potential extensions of applications would then be either postponed or not pursued as not justified given the high required efforts for an application.

To reach an outcome more aligned with the intended goal of EMIR 3.0, we believe that a more reasonable approach would be to:

a) Adequately balance the classification of extensions across material (Article 17) and non-material extensions (Article 17a) by loosening the extremely narrow parameterization of conditions for Article 17a(1) (see our response to Q1-Q5).
b) Extend the scope of exemptions of authorization that would not fall under Article 17 and Article 17a procedures (see our response to Q6 and Q8-Q9).
c) Significantly reduce the documentation requirements for extensions across all three classification types (material, non-material, exempted), while ensuring adherence to the proportionality principle on document requirements (see our response to Q19-Q20).

The outcome of classifications for this more reasonable approach would still extend the number of extensions of authorizations subject to the Article 17/17a procedure, when compared to the legislative Article 45 procedure prior to the EMIR 3.0 review. Nevertheless, we believe the alternatively proposed approach would lead to a more meaningful classification of extensions, consistent with the proportionality principle based on a risk-based approach. As a result, the classification of extension applications would be more balanced across the classification categories and recognize the need for minor extensions of CCP services and activities. Consequently, this outcome would significantly ease the burden for extensions of services and activities for the affected CCPs, NCAs, and ESMA – while still resulting in a broader and more robust approach to extensions of authorizations compared to the Article 45 procedures prior to the EMIR 3.0 review.

In sum, we believe that the more reasonable approach still increases the rigor to assess extensions of authorization compared to the status quo yet avoids leading to an exacerbation of efforts that would be required by the CCPs, NCAs, and ESMA for each and every extension application.

As highlighted above, we consider the list of required information of Article 45 to be significantly too broad and excessive. Our specific response is:

- Point b: We understand that NCAs and ESMA want to understand the new service or activity that the CCP plans to introduce and that an analysis has been undertaken by the CCP with respect to the respective service or product. Yet, while we agree to provide a description of the contracts and classes of (non-)financial instruments covered by the proposed extension to facilitate insights into the CCP's analysis, in our view the business plan with its associated information remains at the responsibility of the CCP. Further, internal CCP view on potential market size and growth forecasts of the new service or activity as well as market participants that intend to use the new service or activity are proprietary information of the CCP. We would like to highlight that CCPs are generally incentivized to invest in promising extensions and that CCP's internal governance structure including the

executive management ensures a respective approach. Therefore, we propose to provide only a description of the contracts and classes of (non-)financial instruments covered by the proposed extension.

- Point c: We understand that NCAs and ESMA want to understand the planned timeline and uncertainties of the extension implementation. Yet, while we agree with providing high-level milestones on the extension implementation, in our view it remains at the responsibility of the CCP to continuously identify, assess and manage project risks and mitigations of the extension implementation. This process begins prior to the official application date and continues thereafter so that at the application date only a snapshot could be provided anyway. Therefore, we propose to provide only high-level milestones of the extension implementation.
- Point d: We are concerned that the requirement to assess the extension against the relevant regulatory requirements results in redundant efforts for the NCA, ESMA, and the CCP. EMIR Article 21 already mandates an annual comprehensive review and evaluation of the CCP's compliance. Therefore, we propose that only the specific regulatory aspects impacted by the extension be assessed by the CCP at the time of the extension application. The remaining aspects should be reviewed by the NCA during the annual evaluation as required by EMIR Article 21.
- Point e: Consistent with point d, within the extension application the list of documents, information and results should be limited to those affected by the extension only.

<ESMA_QUESTION_EXTE_19>

Q20 Are documents and information required to assess an extension of authorisation through the "accelerated procedure", under Article 17a of EMIR, sufficiently clear and comprehensive? Should the applicant CCP provide other documents?

<ESMA_QUESTION_EXTE_20>

As highlighted in our response to Q19, we believe that the ESMA proposal is extremely broad in its scope and disproportionate in its document requirements. Consequently, we expect that de facto minor BAU extensions would mostly be classified as non-material extensions and would consequently also be subject to the Article 17a process. Further, extensions that we would view as non-material would very likely be classified as material – as very likely one of the extremely narrow conditions will be met most of the time. Moreover, the scope of required documentation for non-material extensions exceeds by far the requirements of material extensions subject to the Article 15 procedures prior to the EMIR 3.0 review. As a result, we would expect a significantly increased burden for non-material authorization extensions that would affect CCPs, NCAs as well as ESMA. This outcome would have the impact opposite to the intended goal of EMIR 3.0.

If the EMIR RTS is realized (largely) unchanged to the draft proposal, the optimal response of CCPs will likely be postponement or to not pursue non-material changes as they are not justifiable given the high required efforts for an application.

We have outlined a more reasonable approach that would lead to outcomes more aligned with the intended goal of EMIR 3.0 in Q19.

As highlighted above, we consider the list of required information of Article 46 to be significantly too broad and excessive. Our specific response is:

- Point b: Consistent with points (b) and (c) of our response to Article 45(1) in Q19, the provided information should be limited only to a description of the contracts and classes of (non-) financial instruments covered by the proposed extension (point b.) and to high-level milestones of the extension implementation only (point c.).
- Point c: While we agree with an assessment of the proposed extension of authorization against the classification criteria to increase ex-ante certainty of significance classification, we would like to refer to our responses to Q1-Q6. These would improve the classification and consequently also facilitate the effective assessment against these criteria for the CCP, NCAs as well as ESMA.
- Point d: Consistent with point (d) of our response to Article 45(1) in Q19, we are concerned that the requirements to assess the extension against the relevant requirements of the regulation that are impacted by the extension lead to a duplication of work for the NCA, ESMA and the CCP cecause EMIR Article 21 already requires a full review and evaluation of the CCP's compliance with the regulation at an annual frequency. Instead, we propose that only the directly impacted aspects of the regulation that are affected by the extension are assessed by the CCP at the point of the extension application. The remaining aspects should be reviewed by the NCA as part of the annual review and evaluation according to EMIR Article 21.

  The best example to underline our point would be a CCP which clears equity futures and which wants to launch a new equity futures contract requiring new liquidity/settlement arrangements. The extension triggers the condition for full approval procedure but evidently the concern and trigger relate to liquidity/settlement arrangements and not e.g. stress testing model. From that perspective, the consideration of all elements of the risk framework is counterproductive.
- Point e: Consistent with point d., within the extension application the list of policies and procedures should be limited to those directly affected by the extension only.

<ESMA_QUESTION_EXTE_20>