



Swiss SPTC Meeting

Regulatory Developments

Matthias Heer, 19. December 2018

1. Clearing

Overview of Brexit Implications for SIX x-clear

Field	EU today	EU post Brexit	UK today	UK post transitional period
License	<ul style="list-style-type: none"> Recognized as qualified third-country CCP according to EMIR by ESMA 	<ul style="list-style-type: none"> As today Modifications of EMIR pending New CCP R&R requirements 	<ul style="list-style-type: none"> Active on the basis of its current EU EMIR recognition as a third-country CCP 	<ul style="list-style-type: none"> UK version of Article 25 EMIR equivalence for third-country CCPs
Contractual Situation and Settlement Finality (SF)	<ul style="list-style-type: none"> Swiss law Swiss SF Common law UK SF 	<ul style="list-style-type: none"> Swiss law Swiss SF EU law (new) EU SF (new) 	<ul style="list-style-type: none"> Common law UK SF 	<ul style="list-style-type: none"> Common law UK SF
Interoperability / market adjustments	<ul style="list-style-type: none"> Interoperability with LCH and EuroCCP 	<ul style="list-style-type: none"> Interoperability link only to some extent UK MTFs established in EU 27 	<ul style="list-style-type: none"> UK trade venues. 	<ul style="list-style-type: none"> Some venues are in the process of dividing the UK, EU and Swiss businesses.

UK EMIR Art. 25 - Developments

- The Bank of England (BoE) issued a [letter on 20 December 2017](#) to all TC CCPs such as SIX x-clear wishing to continue to conduct business in the UK after Brexit, requiring them to seek recognition for operation in the UK post-Brexit in accordance with EU laws (EMIR art. 25).
- The BoE [updated its instructions](#) in March 2018, following the announced prolonged transition period, stating that non-UK financial institutions did not have to plan to apply for recognition for the initial Brexit date of 1 April 2019 but instead by the end of the transition period on 31 December 2020.
- According to the BoE, the Recognized Overseas Clearing House (ROCH-) Status, held prior to the ESMA-recognition under EMIR, cannot be revived.
- 27 September 2018 SIX x-clear application was sent out to the BoE.
- Further [instructions](#) by the BoE followed in October 2018, laying out actions third-country CCPs will need to take once the UK legislation is in force and establishes a temporary recognition regime. This will allow eligible CCPs to continue to provide clearing services in the UK for a period up to three years after Brexit.

UK EMIR Art. 25 - Requirements

The requirements under Article 25 UK EMIR are essentially the same as the information required for the third country recognition application process under EMIR.

- Determination by HM Treasury that the legal and supervisory arrangements of the third-country CCP's home regime are equivalent to the UK's legal and supervisory arrangements;
- Effective supervision and enforcement of CCPs in the third-country CCP's home jurisdiction;
- cooperation arrangements in place between the relevant authorities; and
- the CCP must not be established in a jurisdiction classified as high risk in the UK anti-money laundering and counter-terrorist financing framework.

UK EMIR Art. 25

Procedure (steps)	EU	UK
Preconditions		
Legal base	EMIR Art. 25	<i>UK EMIR 25 (Repeal Act)</i>
Grandfathering	Yes	<i>Transition period of three years</i>
Timeline	Based in EMIR (theoretically)	<i>March 2019 plus three years</i>
Steps		
CCP Application	ESMA	<i>BoE</i>
Technical advice	ESMA → EU COM	<i>BoE → HM Treasury</i>
Equivalence of TC regulatory and supervisory framework	EU COM	<i>HM Treasury</i>
Memorandum of Understanding	ESMA – FINMA	<i>BoE – FINMA</i>

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EMIR 2.1 - Refit

Regulatory Timeline

- May 2017: EC Proposal
- Dec 2017: Deliberation in EU Council finalized.
- Jun 2018: Deliberation in EU Parliament finalized.
- Today: trilog almost finished.
- Final compromise expected soon (beginning 2019).
- Amendments to apply 20 days to 6 months after inforce date.
- ESMA expected to submit RTS to EU COM within 9 month.

- The Commission proposal makes targeted amendments, including amendments to the definition of financial counterparty (FC), introducing a clearing threshold for smaller FCs, placing new duties on firms offering clearing services to do so on a fair, reasonable and non-discriminatory basis, removing frontloading and giving the Commission powers to temporarily suspend the clearing obligation.
- Focus on simplifications of EMIR specifications such as
 - *for small non-financial companies, they would no longer have to report a transaction to a trade repository if undertaken with a financial counter-party; (the financial institution will be responsible)*
 - *clearing houses would be required to report exchange-traded derivatives on behalf of both counter-parties;*
 - *changing the way non-financial firms calculate a threshold which would subject them to the clearing obligation;*
 - *the power of the Commission to suspend the clearing obligation in the case of financial stability concerns;*
 - *a removal of the obligation to report derivatives trades not outstanding*

EMIR 2.2 – CCP Supervision

Regulatory Timeline

- May 2017: EC Proposal
- May 2018: Deliberation in EU Parliament finalized.
- Dec 2018: Deliberation in EU Council finalized.
- Today: trilog so start soon.
- Final compromise expected Q1 2019.
- Commission to adopt delegated act specifying criteria for TIER 2 CCPs 6 months after entry into force.

The proposal gives ESMA greater powers to coordinate supervision of TC CCPs. It also gives the Commission power (upon request by ESMA and in agreement with the relevant central bank) to impose a location requirement for non-EU CCPs that are of substantially systemic importance.

From the **council announcement** (3. December 2018):

“Tier 2 CCPs would be subject to stricter rules in order for them to be recognized,

- *compliance with the necessary prudential requirements for EU-CCPs while taking into account third-country rules;*
- *confirmation from the relevant EU central banks that the CCP complies with any additional requirements set by those central banks;*
- *the agreement of a CCP to provide ESMA with all relevant information and to enable on-site inspections, as well as the necessary safeguards confirming that such arrangements are valid in the third country.*

(...) ESMA would also be able to conclude that a CCP or some of its clearing services are of such substantial systemic importance that the CCP should not be recognized.”

EMIR 2.2 – CCP Supervision

- New CCP Executive Session at ESMA
 - improved college of supervisors
 - ECB becomes member of the Executive Session
- Third country CCPs – 2 ½ tier system
 - 1. tier: non systemically CCPs – additional information
 - introduction of fees for third country CCPs
 - 2. tier: systemically important CCPs
 - compliance with CCP rules in EU and third country
 - compliance with additional requirements from concerned central banks and ECB (availability and type of collateral, segregation, liquidity etc.)
 - compliance with additional requirements from ESMA and involved national competent authorities (all relevant information, on-site inspections etc.)
 - safeguards confirming that such arrangements are valid in third country
 - comparable compliance with third countries regimes (reciprocity)
- 2 ½ tier: substantially systemically important CCPs
Commission decides upon request from ESMA and ECB that CCP has to be established in EU

ECB Statutory Amendment

Regulatory Timeline

- Jun 2017: EBC recommendation
- Oct 2017: Positive EC opinion
- Jun 2018: Deliberation in EU Parliament finalized.
- Dec 2018: Deliberation in EU Council finalized, linked to EMIR 2.2
- Today: trilog to start soon
- Final compromise expected Q1 2019 (to coincide with EMIR 2.2 compromise).

- Goals concerning CCPs
 - “a significantly enhanced role for central banks of issue in the supervisory system of central counterparties (CCPs), in particular with regard to the recognition and supervision of systemically important third-country CCPs clearing significant amounts of euro-denominated transactions.
 - Under the proposed amendments to the EMIR framework, the Eurosystem will be able to continue to fulfil its role as the central bank issuing the single currency. The amendments will allow the Eurosystem to monitor and address risks associated with central clearing activities that could affect the conduct of monetary policy, the operation of payment systems and the stability of the euro.”

CCP Recovery and Resolution

Regulatory Timeline

- COM Proposal (November 2016) Following FSB / CPMI-IOSCO work.
- Deliberation in EU Parliament done (January 2018).
- Deliberation in EU Council stopped for 9 month.
- Resumption of work and Council compromise found (October 2018).
- Today; trilog ongoing.
- Final compromises expected for Q1 2019.
- Proposal envisages 18 month implementation period.

The proposal includes preparatory and preventative measures that aim to reduce the risk of a CCP failing and gives resolution authorities resolution powers, to which aim to limit the impact of a CCP's failure on the financial system and public funds by ensuring the continuity of essential services and managing the CCP's failure in an orderly way

- The main element of the proposal are
 - high flexibility for the national resolution authorities when considering the tools to be used and the timing
 - it rejects the idea of a toolkit setting out the order in which the tools should be used as it would limit the authorities' flexibility
 - the main resolution tools in the proposal are: partial or full contracts tear-up, variation margin haircutting, cash calls, write-down and conversion of capital and debt instruments, sale of business, bridge CCP, finally public support as a last resort.
 - possibility for resolution authorities to “require the CCP to set up a parent financial holding company in a Member State or a Union parent financial holding company” ([link to EMIR 2.2 and ESA regulation](#)).

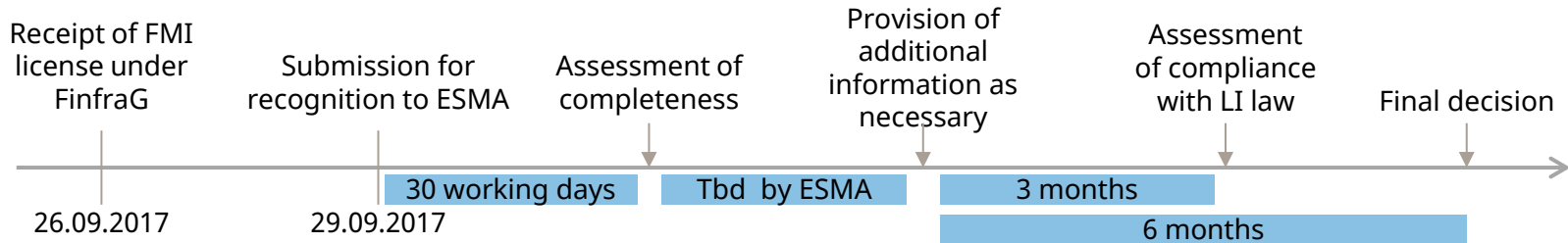
2. Settlement

CSDR SIX SIS Application - Procedure

Requirements for recognition (Article 25(4) CSDR)

- Equivalence decision by the European Commission (Article 25(4)(a));
- Confirmation that SIX SIS is subject to effective supervision and is compliant with prudential requirements applicable in Switzerland (Article 25(4)(b)) – confirmed with receipt of SIX SIS' FMI license under FinfraG from FINMA;
- Cooperation arrangements between ESMA and FINMA (Article 25(4)(c));
- Confirmation by FMA that SIX SIS takes the necessary measures to allow its users to comply with the law of Liechtenstein (Article 25(4)(d)).

Timelines Article 25(6) CSDR



CSDR Settlement Discipline - Overview

CSDR aims to harmonise the Settlement Discipline Regime across the EU.



- Settlement Discipline is regulated in Art. 5 to 8 CSDR and RTS on Settlement Discipline.
- RTS were published on 13.09.2018, implementation is therefore due by 14.09.2020.
- Scope largely but not fully stable yet (mainly for cash penalties where uncertainty remain for certain requirements i.e. how to source required reference data, cross border implication).



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