

Guidelines and Recommendations

Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for
Financial Market Infrastructures in respect of Central Counterparties





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Acronyms Used

CCPs	Central Counterparties
Competent Authority	The authority designated by each Member State in accordance with Article 22 of EMIR. ESMA is responsible for maintaining on its website the following list of the competent authorities designated in accordance with Article 22 of EMIR. This list is available at: http://www.esma.europa.eu/page/Competent-authorities-responsible-authorisation-and-supervision-central-counterparties-CPPs
CPSS-IOSCO	Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions
EMIR	Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”.
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
PFMIs	CPSS-IOSCO Principles for financial market infrastructure, April 2012 (http://www.bis.org/publ/cpss101a.pdf).
RTS	Regulatory Technical Standards

I. Scope

Who?

1. These Guidelines and Recommendations apply to competent authorities designated under Article 22 of EMIR for carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs.

What?

2. These Guidelines and Recommendations concern the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructure¹ (PFMIs) by competent authorities as part of the exercise of their duties resulting from EMIR for the authorisation and supervision of CCPs pursuant to Article 22(1) of EMIR.

When?

3. These Guidelines and Recommendations apply from 4.9.2014.

II. Purpose

4. Following the adoption of the PFMIs in 2012, CPSS-IOSCO has begun a process of assessing their implementation. At present an assessment is taking place of the EU's implementation of the PFMIs.
5. This assessment involves a detailed review of the EU's regulatory framework to ascertain whether it establishes requirements which are consistent with each of the 22 'Principles' and 106 'Key Considerations' applicable to CCPs. For each of the Principles the EU will be graded as either: consistent, broadly consistent, partly consistent or not consistent.
6. While EMIR and the RTS made under it establish requirements which consistently implement the PFMIs, the regulatory framework under EMIR does not always employ the same operative language as used in the PFMIs. ESMA is concerned that differences between the operative language used in the EMIR framework and the operative language used in the PFMIs might prevent the EU from being graded as having consistently implemented the PFMIs in respect of CCPs.

¹ CPSS-IOSCO Principles for financial market infrastructure, April 2012 (<http://www.bis.org/publ/cpss101a.pdf>). The PFMIs consist of 24 Principles, and 5 Responsibilities. For each Principle there are a series of Key Considerations that further explain the headline standard. There are 115 Key Considerations in total

7. This would be an unfortunate outcome given that the legislator (in respect of the EMIR regulation) and ESMA (in respect of the draft RTS it submitted to the Commission under EMIR) both intended for the EU regulatory framework for CCPs to consistently implement the PFMI, and competent authorities have already been applying the PFMI in their supervision of CCPs. This is confirmed in Recital 90 of EMIR which recalls the importance of ensuring international convergence of requirements for CCPs, that EMIR is intended to follow the international standards developed by CPSS-IOSCO, and that ESMA should consider the international standards of CPSS-IOSCO when drawing up the RTS as well as the Guidelines and Recommendations foreseen by EMIR.
8. While the legislator and ESMA both intended for the EU regulatory framework for CCPs to consistently implement the PFMI, and competent authorities have already been applying the PFMI in their supervision of CCPs, this is not currently articulated in a manner that can be referenced by CPSS-IOSCO as part of their assessment of the EU's implementation of the PFMI in respect of CCPs.
9. ESMA considers the adoption of a Guideline and Recommendation under Article 16 of the ESMA Regulation to be an appropriate way of doing so.

III. Compliance and reporting obligations

Status of the guidelines

10. This document contains Guidelines and Recommendations issued under Article 16 of the ESMA Regulation². Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices.

Reporting requirements

11. Competent authorities to whom these Guidelines and Recommendations apply must notify ESMA whether they comply or intend to comply with the Guidelines and Recommendations, with reasons for non-compliance, within two months of the date of publication by ESMA to post-trading@esma.europa.eu. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

IV. Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties

GUIDELINE AND RECOMMENDATION ONE

(Article 22(1) of Regulation (EU) No 648/2012)

EMIR and the regulatory and implementing technical standards made under it establish requirements which are consistent with the Principles for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions (PFMIs). When carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs, competent authorities should ensure that CCPs established in their territory comply with these requirements in accordance with the PFMIs and operate in a manner that is consistent with them.