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)

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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1304. (See end of Document for details)*

(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.

(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:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1304. (See end of Document for details)*

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.

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.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2020/1304. (See end of Document for details)

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.

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.