

Title: THE CENTRAL COUNTERPARTIES (EQUIVALENCE) REGULATIONS 2020	De minimis assessment
SI No: Click here to enter text.	Date: 03/11/2020
Other departments or agencies: Bank of England Contact for enquiries: youri.dayot@hmtreasury.gov.uk	Type of regulation: Domestic Date measure comes into force: 31/12/2020
Cost of Preferred (or more likely) Option No additional cost on business	Net cost EANDCB business per year No additional cost

1. What is the problem under consideration? Why is government intervention necessary? (Maximum 5 lines)

This measure will allow the Bank of England to recognise Central Counterparties (CCPs) from the EU and EEA-EFTA states after the Transition Period (TP). Without recognition arrangements being in place for foreign CCPs, they will lose permission to provide services to UK businesses, in a way that satisfies their clearing obligations, once the Temporary Recognition Regime (TRR) ends.

Under regulation 14 of the Central Counterparties (Amendment, etc., and Transitional Provision (EU Exit) Regulations 2018 (the Temporary Recognition Regime Statutory Instrument or “TRR SI”), HM Treasury has the power to assess foreign jurisdictions to determine whether they have a legal and supervisory framework for CCPs which is equivalent to the European Market Infrastructure Regulation (“EMIR”) as retained EU law. The Bank of England can provide advice to HM Treasury in respect of this decision. After the end of the TP, any such equivalence decision will have effect as if made under Article 25.6 EMIR as in retained EU law. The equivalence decision is a precondition that needs to be fulfilled before the Bank of England can recognize EEA CCPs.

Once an equivalence decision has been made, the Bank of England may, subject to other legislative requirements being met, recognise individual foreign CCPs. This recognition then allows UK businesses and trading venues to continue to use the clearing services of EEA CCPs.

HM Treasury also established in the TRR SI a “Temporary Recognition Regime” (TRR) enabling foreign CCPs to continue their activities in the UK for a three-year period after the end of the TP.

2. What are the policy objectives and the intended effects? (Maximum 5 lines)

HM Treasury is satisfied that the legal and supervisory framework in the EEA states meets at least equivalent outcomes to the ones provided in the UK’s corresponding regime (EMIR as retained EU law). This decision follows advice from the Bank of England and covers all EU member states and EFTA-EEA states (Iceland, Lichtenstein and Norway). HM Treasury is therefore laying regulations under regulation 14 of the TRR SI specifying that these EEA states

meet the relevant criteria to be found equivalent. These regulations will have effect as if made under Article 25.6 of EMIR after the end of the TP.

This will fulfil one of the preconditions that is necessary for the Bank of England to make recognition decisions for individual EEA CCPs, which allows UK businesses and trading venues to continue to use the clearing services of the recognised CCPs after the end of the TRR in December 2023.

**3. What policy options have been considered, including any alternatives to regulation?
Please justify preferred option (Maximum 5 lines)**

In order for the Bank of England to make recognition decisions for foreign CCPs, HM Treasury is first required by EMIR to make an equivalence decision in relation to that jurisdiction. There is no alternative to legislation to achieve the policy objectives. Therefore, no other policy options have been considered aside from doing nothing.

Doing nothing would prevent UK firms from continuing to use EEA CCPs to satisfy their clearing obligations once the TRR ends. The variety of clearing services that UK firms would have access to in order to satisfy their clearing obligations would therefore be reduced, which could lead to increased costs.

4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

This SI will not impose any significant additional requirements or administrative burdens on business. This is because the equivalence decision does not directly affect firms. Instead, it fulfils one of the preconditions that is necessary for the Bank of England to make individual recognition decisions for EEA CCPs. It is the recognition decisions for individual CCPs which allows UK businesses and trading venues to continue to use the clearing services of EEA CCPs.

As set out in section 1, HM Treasury has already introduced the TRR which enables EEA CCPs to continue their activities in the UK for a three-year period after the end of the TP. As of October 2020, 48 foreign CCPs had notified to enter the TRR of which 12 were based in EEA states¹. This equivalence decision, where it is followed by EEA CCPs being recognised by the Bank of England, will have the effect of maintaining current business arrangements for the recognised EEA CCPs and their UK clients. To what extent this decision will maintain the status quo is dependent on which EEA CCPs apply for recognition, whether they are successful and whether they choose to make use of the benefits of recognition.

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

- a) Significant distributional impacts (such as significant transfers between different businesses or sectors)**

¹ <https://www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/interim-list-of-third-country-ccp.pdf?la=en&hash=5476B539773D6E5F667DFDC238B982F93C515C6F>

No

b) Disproportionate burdens on small businesses

No. This SI itself does not change or create disproportionate burdens on small businesses. This is because the equivalence decision does not directly affect firms. Instead, it fulfils one of the preconditions that is necessary for the Bank of England to make individual recognition decisions for EEA CCPs.

c) Significant gross effects despite small net impacts

No

d) Significant wider social, environmental, financial or economic impacts

No

e) Significant novel or contentious elements

No

Sign-off for de minimis assessment: SCS

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Financial Services Group

Signed: Tom Duggan

SCS of Better Regulation Unit

Signed: Linda Timson

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen***

Date: 03/11/2020