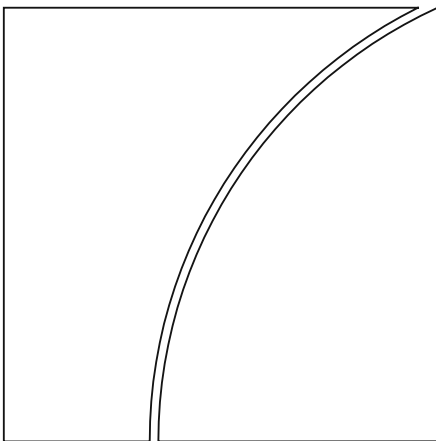


Committee on
Payments and Market
Infrastructures

Board of the International
Organization of Securities
Commissions



Implementation
monitoring of PFMI:
Level 2 assessment
report for central
counterparties and
trade repositories –
European Union

February 2015



BANK FOR INTERNATIONAL SETTLEMENTS



OICJ-IOSCO

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1. Executive summary

In April 2012, the Committee on Payments and Market Infrastructures (CPMI)¹ and the International Organization of Securities Commissions (IOSCO) published a report entitled Principles for financial market infrastructures (PFMIs). The principles within the PFMIs (the Principles) set expectations for the design and operation of key financial markets infrastructures (FMIs) to enhance their safety and efficiency and more broadly, to limit systemic risk and foster transparency and financial stability. The Principles apply to all systemically important payment systems, central securities depositories (CSDs), securities settlement systems (SSSs), central counterparties (CCPs) and trade repositories (TRs) (collectively FMIs). These FMIs collectively clear, settle and record transactions in financial markets. Among other things, the Principles provide important support for the G20 strategy to enhance financial system resilience by ensuring that standardised over-the-counter (OTC) derivatives are centrally cleared. CPMI and IOSCO members have committed to implement and apply the PFMIs in their respective jurisdictions.

Following the publication of the PFMIs, the CPMI and IOSCO agreed to monitor their implementation in the 28 CPMI and IOSCO member jurisdictions. They agreed to a three-level monitoring framework that involves: a Level 1 (L1) assessment of the status of the implementation process; a Level 2 (L2) assessment of the completeness of the implemented framework and its consistency with the PFMIs; and a Level 3 (L3) assessment of the consistency in outcomes of such frameworks.

This report represents an L2 assessment of whether, and to what degree, the content of the legal and regulatory framework in the European Union as a whole, namely the European Market Infrastructure Regulation (EMIR), or the oversight framework of the EU central banks, including rules and regulations, any relevant policy statements,² is complete and consistent with the Principles. For CCPs, the scope of the assessment comprised implementation measures applicable to the European Union as a whole as well as central bank oversight measures for the eight European Union countries that participate in the CPMI-IOSCO implementation monitoring exercise. It should be noted that L2 assessments do not evaluate if the FMI is in observance with these measures, nor does it assess the effectiveness of the application of the legal and regulatory or oversight framework on the FMI by authorities (for example through supervisory practices).

The work on the L2 assessment was carried out during 2014. The assessment reflects the status of the EU legal, regulatory and oversight framework as of 18 April 2014. While the report notes certain relevant changes in the EU framework that have occurred since that date, these changes were not assessed as part of this report. Any future update to this report would analyse those changes as part of providing an updated assessment.

1.1 Legal and regulatory framework

In the European Union, different authorities are responsible for the regulatory, supervisory and oversight frameworks applicable to CCPs and TRs. As discussed further below, there are overlapping

¹ The Committee on Payment and Settlement Systems (CPSS) changed its name to the Committee on Payments and Market Infrastructures (CPMI) on 1 September 2014. Please note that references to reports published before that date use the Committee's old name.

² National supervisors may also impose requirements additional to measures applicable to the European Union as a whole in accordance with their supervisory practices. Since the focus of this exercise is on the content of the legal and regulatory framework in the EU as a whole (namely, the EMIR) or on oversight framework, such additional requirements have not been formally assessed. Nevertheless, where relevant, these have been noted to enhance clarity.

responsibilities between the authorities with *supervisory* authority over CCPs, whose approach to implementing the PFMI is primarily rules-based, and the central banks with *oversight* authority over CCPs, whose approach to implementing the PFMI is policy-based. For TRs there is no such overlap; the responsibility for regulation of TRs is carried out by one European Union-level authority.

Central counterparties

The European Parliament and the European Council are responsible for establishing the legislative aspect of the regulatory framework applicable to CCPs, following a proposal from the European Commission. The European Commission is responsible for establishing the technical aspects of the regulatory framework, following proposals from the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA). National authorities (referred to as “national competent authorities”) retain responsibility for the authorisation and the supervision of CCPs. In the European Union, all CCPs are subject to the regulatory framework of the Union.

A college of supervisors is established for each CCP. These colleges comprise the national competent authorities, other EU national authorities that supervise entities on which the operations of that CCP might have an impact (namely selected clearing members, trading venues, interoperable CCPs and central securities depositories), as well as members of the European System of Central Banks (ESCB), (as overseers and central bank of issue), and ESMA.

CCPs are also subject to oversight by central banks. Oversight is a central bank function based on independent mandates within the central banks that are distinct to, and exist separately from, the EMIR regulatory framework. The authorities responsible for supervision and oversight of CCPs have overlapping responsibilities.

In evaluating the EU framework for CCPs, the assessment team (AT) first considered the application of the EMIR and the accompanying regulatory technical standards.³ This supervisory framework for CCPs is adopted at EU level and can be described as primarily a rules-based approach for implementing the PFMI. Second, the AT considered the central bank oversight frameworks for CCPs implemented through policy statements in the eight European countries (Belgium, France, Germany, Italy, Netherlands, Spain, Sweden and the United Kingdom) that are involved in the implementation monitoring exercise.

Trade repositories

For TRs, the European Parliament and the European Council are responsible for establishing the legislative aspect of the regulatory framework, following a proposal from the European Commission. The European Commission is responsible for establishing the technical aspects of the regulatory framework, following proposals from the European Securities and Markets Authority (ESMA). ESMA is the sole supervisor of TRs.

In evaluating the EU framework for TRs, the AT considered the application of EMIR and the accompanying regulatory technical standards. This supervisory framework for TRs is adopted at EU level and can be described as primarily a rules-based approach for implementing the PFMI.

1.2 Key findings of the assessment

Central counterparties

³ The ESMA Guidelines and Recommendations report is not taken into account in the ratings shown in this report because it was published after the 18 April 2014 as of date set for this assessment process. Refer to section 3.1.4 regarding *Recent and upcoming changes*.

The AT concluded that the regulations embodied in EMIR and the accompanying technical standards for CCPs are consistent or broadly consistent with a majority of the Principles. In fact, in some instances the regulations are more prescriptive than the minimum requirements in the PFMI, in particular in relation to financial risks.

The AT also observed some gaps and inconsistencies between EMIR and the accompanying technical standards for CCPs and the Principles, which are discussed in Section 4.1.2 below. In several instances, the regulations do not address the requirement for ex ante planning, which is considered a key tenet of the Principles. Areas lacking requirements for such planning include recovery plans, the allocation of uncovered credit losses, and the replenishment of financial resources and liquidity resources that a CCP may employ during a stress event.

However, the AT found that for a number of the participating individual EU countries, the overlay of active and effective central bank oversight on top of EMIR and the accompanying technical standards for CCPs was sufficient to achieve full consistency with the Principles. This is discussed in more detail in Section 3.1.3 and Table 2b.

Trade repositories

The AT concluded that a number of the regulations embodied in EMIR and the accompanying technical standards for TR are consistent or broadly consistent with the Principles.

Some gaps and inconsistencies were noted and are discussed in Section 4.1.3. With regard to TRs, the AT observed that, the primary detail concerning the European Union's requirements for TRs was found in the "regulatory technical standards specifying the details of the application for registration as a trade repository". The general nature of these requirements, coupled with their emphasis on the registration process rather than ongoing compliance, presented challenges for evaluating the completeness of the EU framework regarding TRs.

1.3 Summary response from the assessed EU authorities

The European Union has adopted a dual approach to implementing the PFMI within its regulatory framework for CCPs and TRs. Moreover, the central banks included in this assessment have through policy statements adopted the PFMI in view of their conduct of oversight or supervision of financial market infrastructures. Thus, authorities in the European Union already apply frameworks that they consider consistent with the PFMI for their regulatory and oversight activities.

The European Parliament and Council have adopted legislation (EMIR) which is intended to consistently implement the PFMI. The European Commission (EC) has also adopted regulatory and implementing technical standards submitted by ESMA and EBA to further prescribe the details of the regulatory framework and which are also intended to consistently implement the PFMI. The intention to consistently implement the PFMI is confirmed in Recital 90 of EMIR.

To further ensure consistency between the prescriptive regulatory and the descriptive PFMI texts, ESMA adopted on 5 August 2014 Guidelines and Recommendations, directed to national competent authorities, on the implementation of the PFMI. However, as it was adopted after the reference date (18 April 2014) for the assessment, it was not taken into account by the assessment team (AT) when conducting this assessment. The AT does however note, in referring to recent and upcoming changes, that the ESMA Guidelines and Recommendations document is helpful. All eight European countries that are part of the implementation monitoring exercise have notified ESMA that they comply with the Guidelines and Recommendations and therefore when carrying out their duties resulting from EMIR, ensure that CCPs established in their territory comply with the EMIR requirements in accordance with the PFMI and operate in a manner that is consistent with the PFMI.

In reviewing the EMIR framework, the AT has identified some areas in which it believes that additional or more detailed requirements should be adopted in order for the PFMIIs to be completely and consistently implemented. Most of these are differences in the way in which the requirements of the EMIR framework are articulated as compared with that of the PFMIIs. The European authorities consider that the regulatory framework for CCPs and TRs under EMIR does in practice achieve the objectives of the PFMIIs, namely to enhance the safety and efficiency of clearing and recording arrangements and to limit systemic risk, foster transparency and enhance financial stability.

Furthermore, the EU authorities consider it needs to be spelled out clearly that EMIR contains several key requirements that are considerably more demanding for CCPs than the minimum financial risk requirements of the PFMIIs. EMIR thus on some aspects offers a higher level of systemic risk protection as the minimum requirements set out in the PFMIIs.

The Eurosystem, Bank of England and Sveriges Riksbank have adopted policy statements that implement the PFMIIs as oversight and supervisory standards for all types of FMIs.

European securities and markets regulators and central bank as overseers both seek to ensure full and consistent adherence to the PFMIIs. As a result and in conclusion, the European Union has implemented all 24 Principles of the PFMIIs fully and consistently.

The EU authorities do however acknowledge the AT's recommendations and will review them as part of their on-going work to mitigate systemic risk and promote stability in the financial system and as part of future evolvments in the regulatory framework. In particular, the EU authorities would like to point out that now that the international guidance on recovery and resolution of FMIs was published in mid-October 2014 by CPMI-IOSCO and by the FSB respectively, the EC intends to propose in early 2015 a legal framework for recovery and resolution of CCPs.

2. Introduction

This report presents the CPMI and IOSCO conclusions of the L2 assessment of the Principles for the European Union with regard to CCPs and TRs. The assessment reflects the status of the EU legal, regulatory and oversight framework as of 18 April 2014. This assessment was conducted as a peer review from March to October 2014.⁴

This assessment is part of the first round of L2 assessments that focused on the legal and regulatory framework implementing the Principles applicable to CCPs and TRs in the European Union, Japan and the United States. The selection of jurisdictions participating in this first round was based on the location of major global CCPs and TRs. For practical reasons, the L2 assessments are being carried out sequentially for groups of jurisdictions, covering different types of FMIs, and focused only on the Principles applicable to those FMIs. Implementation of the Responsibilities included in the PFMI applicable to authorities will be assessed in a separate exercise.

The counterparts for the assessment were the ECB, the European Commission and ESMA, given the central role of these three authorities in the regulation, supervision and/or oversight⁵ of the CCPs and TRs in the European Union.

2.1 Broader context of the Level 2 assessment

In line with the G20's expectations, CPMI and IOSCO members have undertaken to incorporate the Principles and the Responsibilities included in the PFMI in their legal and regulatory frameworks. The CPMI and IOSCO regard full, timely and consistent implementation of the PFMI as fundamental to ensuring the safety and soundness of key FMIs and to supporting the resilience of the global financial system.

To that end, the CPMI and IOSCO are actively monitoring the implementation of the PFMI based on a monitoring framework that involves three phases:

- (1) L1 to assess whether jurisdictions have completed the process of adopting the legislation, regulations and other policies that will enable them to implement the Principles and Responsibilities;
- (2) L2 to assess whether the content of legislation, regulations and policies (the regulatory framework) is complete and consistent with the Principles and the Responsibilities; and
- (3) L3 to assess whether there is consistency in the outcomes of implementation of the Principles and Responsibilities.

⁴ The CPMI and IOSCO would like to thank the assessment team, which was led by Jun Mizuguchi (Japanese Financial Services Authority (JFSA)) with the participation of Shashi Kumar Valsakumar (Securities and Exchange Board of India), Jennifer Lucier (Federal Reserve Board), Catherine Moore (Securities and Exchange Commission), Stephen Pang (Hong Kong Monetary Authority (HKMA)), Sophie Lefebvre (Bank of Canada) and Robert Wasserman (Commodity Futures Trading Commission (CFTC)) as well as Umar Faruqui (CPMI secretariat), Yukako Fujioka (IOSCO secretariat), Annemarie Hondius (CPMI secretariat) Manabu Kishimoto (IOSCO secretariat) and Tze Hon Lau (CPMI secretariat) as supporting members. The CPMI and IOSCO would also like to give special thanks to Carol Brigham (Bank of Canada) for her contribution to the AT, and to thank those who provided support to the AT, including Allie E Bagnall (Federal Reserve Board), Melissa D'Arcy (CFTC), Kazunari Mochizuki (JFSA), Tracey Wingate (CFTC) and Yuri Yoshida (JFSA).

⁵ With respect to the oversight of CCPs, the AT also benefited from discussions with the relevant EU national central banks.

The CPMI and IOSCO have conducted two L1 assessments since the publication of the PFMI. The initial assessment was published in August 2013⁶ and the first update was published in May 2014.⁷ The main observation of those L1 assessments was that most jurisdictions had begun the process of implementation, but not all of the jurisdictions had completed the process for all types of FMI. The assessments also showed that jurisdictions have implemented, or are in the process of implementing, the PFMI in different ways. Depending on the national legal and regulatory or oversight framework, some jurisdictions use a policy-based approach (ie rely on a policy statement as the primary tool for adopting the PFMI), some use a rules-based approach (ie rely on rules and/or regulations corresponding to the PFMI) and others combine these two approaches.

In this respect, EMIR and accompanying technical standards can be described as a rules-based approach for implementing the PFMI for both CCPs and TRs. EMIR and accompanying technical standards are detailed regulations that apply to CCPs and TRs.

In addition to the detailed regulation at EU level for CCPs contained in EMIR, the Eurosystem, and some non-euro area central banks,⁸ have adopted policy statements, which apply to the CCPs operating in their jurisdiction and subject to their oversight. For CCPs the EU jurisdiction can thus be described as having a combination between a rules-based and a policy-based approach for implementing the PFMI.

The CPMI and IOSCO will continue to monitor jurisdictions' progress in implementing the Principles and Responsibilities in future L1 and L2 assessments.

2.2 Objective and rating

The aim of the L2 assessment is to determine whether, and to what degree, the content of the legal and regulatory and oversight framework, including any relevant policy statements or other forms of implementation, applied in the European Union is complete and consistent with the Principles. The focus of the L2 assessment is on the relevant framework itself, not on the application of this framework by authorities, nor on FMI's observance.

Any planned regulatory changes that the EU authorities have for improving the degree of consistency with the Principles are also discussed in the assessment.

In conducting its assessment, the CPMI and IOSCO assessed whether there are gaps or shortcomings between implementation measures and the Principles and, if so, evaluated the materiality of the potential impact of those gaps. Ratings were then assigned based on these determinations to reflect the degree of completeness and consistency between an implementation measure and a particular Principle.

The rating framework used in L2 assessments (Table 1) is an adaptation of the approach described in the PFMI Assessment Methodology⁹ (AM). In order to reflect the fact that the purpose of the L2 assessment is to evaluate the completeness and consistency of a jurisdiction's implementation

⁶ CPSS-IOSCO, Implementation monitoring of PFMI – Level 1 assessment report, August 2013, <http://www.bis.org/publ/cpss111.htm>.

⁷ CPSS-IOSCO, Implementation monitoring of PFMI: *first* update to Level 1 assessment report, May 2014, <http://www.bis.org/publ/cpss117.htm>.

⁸ The two non-euro area central banks that are part of the implementation monitoring exercise are the Bank of England and the Sveriges Riksbank.

⁹ CPSS-IOSCO, "Principles for financial market infrastructures: Disclosure framework and assessment methodology", December 2012, <http://www.bis.org/cpmi/publ/d106.pdf>

measures, rather than whether FMIs in the jurisdiction are in observance of the Principles, the rating levels are: “Consistent”, “Broadly consistent”, “Partly consistent”, “Not consistent” and “Not applicable”.

Status rating of the Level 2 assessment		Table 1
Consistent	The jurisdiction’s regulatory framework is consistent with the Principle. The assessment has identified no gaps or shortcomings, or only a few gaps and/or shortcomings that have no material impact on completeness and/or consistency.	
Broadly consistent	The jurisdiction’s regulatory framework is broadly consistent with the Principle. The assessment has identified gaps and/or shortcomings that have a minor impact on completeness and/or consistency.	
Partly consistent	The jurisdiction’s regulatory framework is partly consistent with the Principle. The assessment has identified gaps and/or shortcomings that have a significant impact on completeness and/or consistency.	
Not consistent	The jurisdiction’s regulatory framework is not consistent with the Principle. The assessment has identified gaps and/or shortcomings that have a major impact on completeness and/or consistency.	
NA – No implementation measures needed (ie not applicable)	This status corresponds to the case where no relevant FMI exists that is within the scope of the Principles. A rating of “NA” will be indicated only if no relevant regulatory measures are being taken and no such FMI is expected to develop within the jurisdiction.	

2.3 Scope

This report covers implementation measures under EMIR for CCPs and TRs that are subject to the PFMI¹⁰. The implementation measures assessed include EMIR and the accompanying technical standards, as well as the Settlement Finality Directive (SFD) and the CSD Regulation. In addition, the oversight framework is considered in the analysis, as applicable, with respect to the jurisdictions that are participating in the implementation monitoring process.

The CCPs and TRs that are subject to EMIR and accompanying technical standards are listed in Annex D. The regulations and policy approaches assessed are further described in Section 3.

2.4 Process

This L2 assessment was carried out pursuant to the following three stages over the course of eight months: (i) collection of relevant information from EU authorities based on responses to questionnaires provided by the EU authorities; (ii) off-site review and follow-up exchange of information and discussions via teleconference and in-person meetings with the EU authorities and other members of the CPMI-IOSCO Implementation Monitoring Task Force (IMTF); and (iii) review of this report by and contributions from the EU authorities. The aim was to gain insight into the regulatory, supervisory and oversight framework as well as the content of existing and proposed legislation, regulations and policies used in the implementation of the Principles for CCPs and TRs established in the European Union.

¹⁰ FMIs that are determined by national authorities to be systemically important are expected to observe the PFMI. The presumption is that all CSDs, SSSs, CCPs and TRs are systemically important. If an authority determines that a CSD, SSS, CCP or TR in its jurisdiction is not systemically important and, therefore, not subject to the Principles, the authority should disclose the name of the FMI and a clear and comprehensive rationale for the determination. Conversely, an authority may disclose the criteria used to identify which FMIs are considered as systemically important and may disclose which FMIs it regards as systemically important against these criteria. (See 1.20 of the PFMI.)

An AT conducted a peer review based on the information provided by the relevant authorities as noted above. The assessment process was designed to be iterative in nature. Interactions between the AT members and EU authorities helped ensure that the AT would understand the content and intent of the EU framework and allowed the assessed jurisdiction an opportunity to provide feedback to the AT. In addition, discussions among the three assessment teams and other members of the IMTF¹¹ helped ensure that a consistent approach was applied across all the assessed jurisdictions.

The report also reflects input from the EU authorities that reviewed the findings and recommendations and provided a jurisdictional response. A concise summary of the views of the EU authorities is included in the executive summary of the report, and more-detailed comments can be found in Annex C.

¹¹ The IMTF was set up by the CPMI-IOSCO Steering Group to design, organise and carry out the implementation monitoring assessments. The IMTF comprises representatives from 18 jurisdictions that reflect a balance of CPMI and IOSCO members and geographical dispersion, as well as a range of domestic and global FMIs' supervisors and overseers.

3. Overview of the regulatory, supervisory and oversight framework

In the European Union, there is shared competence for the regulation of the financial markets, which means that, where full or maximum harmonisation legislation is passed at EU level, member states cannot legislate in the same area. Moreover, where the legislation passed at EU level takes the form of an EU regulation, it is immediately and directly applicable in all member states, and prevails over national law. Such EU legislation is directly binding on market participants without any need for additional action by national parliaments or national competent authorities.

On 16 August 2012, *Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories* entered into force. This regulation is better known as the European Market Infrastructures Regulation (EMIR)¹² and implements the regulations with respect to CCPs and TRs in the European Union. EMIR, together with the relevant regulatory technical standards (RTS) and implementing technical standards (ITS), establishes the harmonised requirements with which EU CCPs and TRs have to comply.

Within the European Union, a number of different authorities are responsible for the regulatory, supervisory and oversight framework applicable to CCPs and TRs, including the following:

(i) The *European Parliament (EP)*, which represents the European Union's citizens and is directly elected by them, and *the European Council*, which represents the governments of the EU member states and consists of one minister from each member state, are together responsible for establishing the legislative aspect of the regulatory framework.

(ii) The *European Commission (EC)* consists of one commissioner from each member state and represents the interests of the European Union as a whole. The EC has the legal authority to propose legislation, such as EMIR, and to adopt the delegated and implementing acts, and is responsible¹³ for making sure that EMIR is properly applied in all the member states. Primary legislation is adopted by the European Parliament and the European Council.¹⁴

(iii) *ESMA* is an independent EU authority that, among other things, is assigned responsibility for safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets as well as enhancing investor protection. In particular, ESMA is responsible for fostering supervisory convergence both among securities regulators and across financial sectors by working closely with the other European supervisory authorities. Under EMIR, the supervision of TRs has been entrusted directly and exclusively to ESMA. For CCPs, ESMA is tasked with preparing the guidelines and recommendations and most of the delegated and implementing acts for adoption by the European Commission. ESMA participates in all CCP colleges¹⁵ and is charged with ensuring the consistent application of EMIR by national supervisory authorities, building a common EU supervisory culture and consistent supervisory practices with respect to EMIR, to ensure uniform procedures and consistent approaches throughout the Union. ESMA is also responsible for (a) the validation of CCP risk models following changes, together with the National Competent Authorities (NCAs), and (b) carrying out EU-wide stress testing of CCPs on an annual basis.

Under EU law, it is ESMA that has been authorised to develop draft RTS and ITS (in many cases, "after consulting members of the ESCB" or "after consulting the EBA and the ESCB"),¹⁶ to ensure the

¹² See www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF.

¹³ This is a responsibility shared with the European Court of Justice.

¹⁴ The composition of ministers attending a given Council meeting depends on the topics on the agenda.

¹⁵ See Section 3.11 below for further discussion of CCP colleges.

¹⁶ See EMIR, Recital 10; and, eg EMIR, Articles Article 26(9), 41(5) and 44(2).

consistent application of EMIR by national supervisory authorities,¹⁷ and to “build a common Union supervisory culture and consistent supervisory practices, as well as [...] ensure uniform procedures and consistent approaches throughout the Union”.¹⁸

(iv) The *member states* of the European Union are responsible for implementing EMIR in their jurisdictions. Each member state is required by EMIR to ensure that a designated competent authority in its jurisdiction has the supervisory and investigatory powers necessary for the exercise of its functions.¹⁹

(v) *National competent authorities*: pursuant to Article 22 of EMIR, each member state shall designate the competent authority responsible for carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs established in their territory. ESMA is responsible for maintaining on its website a list of the competent authorities designated in accordance with Article 22 of EMIR.²⁰

(vi) The *European System of Central Banks (ESCB)* consists of the ECB and the national central banks (NCBs) of all EU member states. The relevant members of the ESCB have oversight authority over CCPs and participate in the CCP colleges – inter alia, as overseer of the CCP, as overseer of any interoperable CCP or as the central bank of issue of the most relevant EU currencies of the financial instruments cleared.

(vii) The *Eurosystem* comprises the ECB and the NCBs of the EU member states that have joined the euro area. At present, 18 of the EU member states have adopted the euro. The Governing Council of the ECB takes its decisions without seeking or receiving instructions from governments or from other EU institutions. The main objective of the ECB is to maintain price stability in the euro area. On 3 June 2013, the Governing Council of the ECB adopted the PFMI as Eurosystem oversight standards for all types of FMI. There are six jurisdictions in the euro area (Belgium, France, Germany, Italy, the Netherlands and Spain) that are individually participating in the CPMI-IOSCO implementation monitoring exercise.

(viii) The *NCBs of EU member states that have not joined the euro area*. Among the national jurisdictions in the European Union that are individually participating in the CPMI-IOSCO implementation monitoring exercise, there are two central banks that are not part of the Eurosystem: the Bank of England and Sveriges Riksbank.

The AT separately notes that the supervisory and oversight framework in Europe includes a number of key players, among them ESMA, NCAs and NCBs. However, the roles of these entities vary across the member states. In evaluating the EU framework, the AT considered the application of EMIR and accompanying technical standards as well as the policy statements that have been adopted by the Governing Council of the ECB and certain NCBs in jurisdictions within the European Union but outside the euro zone.²¹

3.1 CCP supervision and oversight

3.1.1 Relevant regulations

As noted above, EMIR outlines the general requirements applicable to CCPs and TRs. The more detailed requirements for CCPs are embodied in the RTS and ITS. For CCPs, the relevant RTS and ITS are:

¹⁷ See EMIR, Recital 10.

¹⁸ See Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (ESMA), Article 29(1).

¹⁹ See EMIR, Article 22.

²⁰ The list can be found on ESMA's website: <http://www.esma.europa.eu/page/Competent-authorities-responsible-authorisation-and-supervision-central-counterparties-CPPs>.

²¹ The two non-euro area central banks that are part of the implementation monitoring exercise are the Bank of England and the Sveriges Riksbank.

- Commission Implementing Regulation (EU) No 1249/2012 of 19 December 2012 with regard to the format of the records to be maintained by CCPs (*ITS on record keeping*).²²
- Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (*RTS on indirect clearing*).²³
- Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 on capital requirements for CCPs (*RTS on CCP Capital*).²⁴
- Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 on requirements for CCPs (*RTS on CCP requirements*).²⁵
- Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 on colleges for CCPs (*RTS on colleges*).²⁶

All the above RTS came into effect on 15 March 2013 and ITS on 10 January 2013, except for the RTS on colleges, which came into force on 11 October 2013.

In addition to the regulations contained in EMIR and the relevant RTS- and ITS-related documents listed above, ESMA has, in some instances, also issued Guidelines and Recommendations. Guidelines and Recommendations are not legally binding,²⁷ but set out ESMA's view of how the primary legislation should be applied in a particular area, or of appropriate supervisory practices within the European System of Financial Supervision. The Guidelines and Recommendations relevant for CCPs include:

- ESMA Guidelines and Recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements,²⁸ published in March 2013.
- ESMA Guidelines and Recommendations regarding written agreements between members of CCP colleges,²⁹ published in June 2013.

These Guidelines and Recommendations apply to all competent authorities designated under Article 22 of EMIR for carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs, and such authorities are required to confirm to ESMA whether they comply with the Guideline and Recommendation, and, if not, must explain their reasons.³⁰ ESMA publishes such notifications.

²² See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.352.01.0032.01.ENG.

²³ See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1396617095959&uri=CELEX:32013R0149>.

²⁴ See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.052.01.0037.01.ENG.

²⁵ See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.052.01.0041.01.ENG.

²⁶ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:244:0019:0022:EN:PDF>.

²⁷ See *Frequently asked questions: a guide to understanding ESMA*, 3 January 2011, ESMA/2011/009 at, pp. 4–5 (§II(4)), available at http://www.esma.europa.eu/system/files/2011_009.pdf ("ESMA FAQ").

²⁸ See <http://www.esma.europa.eu/content/Guidelines-and-Recommendations-establishing-consistent-efficient-and-effective-assessments-i>.

²⁹ See http://www.esma.europa.eu/system/files/2013-661_report_gr_on_college_written_agreement_-_final_for_publication_20130604.pdf.

³⁰ See Article 16 of *Regulation (EU) No 1095/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)*, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R1095>.

Finally, ESMA also provides clarifications of the regulatory framework in the form of a Q&A on the implementation of EMIR and relevant EC delegated and implementing regulations.³¹ The Q&A covers issues related to both CCPs and TRs and is designed to promote common supervisory approaches and practices in the application of EMIR.

3.1.2 Supervision

Under EMIR, NCAs retain responsibility for the authorisation and supervision of CCPs, including the responsibility for verifying that a CCP applying for authorisation complies with EMIR. ESMA maintains on its website a list of the NCAs of the member states, responsible for the authorisation and supervision of CCPs.³² Those NCAs are responsible for examining how the CCPs operate on a daily basis, carrying out regular reviews and taking appropriate action, where necessary.

The NCAs responsible for supervising CCPs are required to regularly review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with EMIR and to evaluate the risks to which such CCPs are, or might be, exposed. NCAs establish the frequency and depth of such reviews and evaluations, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CCP. At a minimum, these reviews/evaluations need to take place at least annually. As part of such reviews and evaluations, the CCP is subject to on-site inspections.

Each relevant EU member state is required by EMIR to ensure that the designated competent authority has the supervisory and investigatory powers necessary for the exercise of its functions. Where a member state designates more than one competent authority, it needs to clearly determine the respective roles and designate a single authority to be responsible for coordinating cooperation and the exchange of information with the EC, ESMA, other member states' competent authorities, the EBA and the relevant members of the ESCB. In addition, relevant EU member states must ensure that appropriate administrative measures, in conformity with national law, can be taken or imposed against CCPs for non-compliance with EMIR. Those measures must be effective, proportionate and dissuasive and may include requests for remedial action within a set time frame.

However, because a CCP's clearing members may be established in different member states, ESMA is involved in the authorisation and supervisory process. This is intended to avoid divergent national measures or practices and obstacles, and to ensure the consistent and correct application of EMIR and the proper functioning of the EU market.

Furthermore, there is a college of supervisors for each CCP. The college comprises the supervisors of the entities on which the operations of that CCP might have an impact, namely selected clearing members, trading venues, interoperable CCPs and central securities depositories, along with the relevant members of the ESCB and ESMA.

The establishment and functioning of the college are based on a written agreement between all of its members. The college has decision-making power and provides the national authorities with an opinion on the compliance of the CCP with EMIR at the time of authorisation of the CCP under EMIR, and at various other points of the supervisory cycle, including with respect to changes to the activities and services offered by the CCP, and changes to the risk management framework of the CCP. Therefore, the national authorities must regularly, and at least annually, inform the college of the results of the review and evaluation, including any remedial action taken or penalty imposed.

³¹ For the latest version of ESMA's Q&A for EMIR, see <http://www.esma.europa.eu/system/files/2014-815.pdf>. The Q&A is not part of the official regulatory framework, but instead provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR.

³² The list can be found on ESMA's website: <http://www.esma.europa.eu/page/Competent-authorities-responsible-authorisation-and-supervision-central-counterparties-CPPs>.

ESMA is tasked with fulfilling a coordination role between competent authorities and across colleges with a view to building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes. For the specific purpose of the reviews and evaluations to which CCPs are subject, ESMA is charged with, at least annually, conducting a peer review of the supervisory activities of all national authorities in relation to the authorisation and supervision of CCPs under EMIR.

3.1.3 Oversight

The AT considered the central bank oversight frameworks for the eight EU countries that are part of the implementation monitoring exercise. Within these eight EU countries, there are commonalities with respect to central bank oversight for those countries that are part of the euro area (Belgium, France, Germany, Italy, the Netherlands and Spain), as they fall under the umbrella of the Eurosystem. Meanwhile, the non-euro area countries – Sweden and the United Kingdom – have separate central bank oversight frameworks.

The AT found that a legal basis for central bank oversight exists for all eight European countries that are part of the implementation monitoring exercise. However, active oversight and an ability to induce change in areas that bring the framework applicable to CCPs towards consistency with the PFMI were demonstrated in seven of these eight European countries.

Legal basis for oversight by EU central banks that are part of the implementation monitoring exercise

Within the European Union, all eight of the central banks examined have the power to oversee CCPs.³³ This competence is separate from and in addition to the supervision conducted by the relevant NCAs, since it derives from central banks' statutory responsibilities as described below. A summary of these oversight frameworks for the Eurosystem, the Bank of England and Sveriges Riksbank (central bank of Sweden) are included in this section.

The Eurosystem is the central bank system for the euro area. It conducts FMI oversight on the basis of Article 127(2) of the Treaty on the Functioning of the European Union and Articles 3.1 and 22 of its Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (the Statute).

On 3 June 2013, the Governing Council of the ECB published a policy statement adopting the PFMI for the "conduct of Eurosystem oversight in relation to all types of financial market infrastructures".³⁴ This policy statement is binding for the Eurosystem central banks as per Article 14.3 of the Statute. In addition, Article 12.1 of the Statute states that: "To the extent deemed possible and appropriate [...], the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB."

The Bank of England is the national competent authority under EMIR and is responsible for the supervision and oversight of UK CCPs. Section 2A of the Bank of England Act 1998 gives the Bank a

³³ It should be noted that Recital 11 of EMIR states that EMIR is "without prejudice to the responsibilities of the European Central Bank (ECB) and the national central banks (NCBs) to ensure efficient and sound clearing and payment systems within the Union and with other countries". It also states that "in order to prevent the possible creation of parallel sets of rules, ESMA and the ESCB should cooperate closely when preparing the relevant draft technical standards" (emphasis supplied). This is in recognition of the oversight powers of central banks, discussed in the text, and an expression of a wish to avoid a situation with multiple (legally binding) standards with potentially divergent and even conflicting requirements. However, the central banks have adopted the PFMI as oversight standards pursuant to authorities discussed above, and there is no legal conflict between EMIR and such oversight policy statements.

³⁴ See: <http://www.ecb.europa.eu/press/govcdec/otherdec/2013/html/gc130621.en.html>.

financial stability objective to protect and enhance the stability of the UK financial system. The Bank of England has publicly stated that “[a]s part of the Bank’s supervisory approach, supervised FMIs are assessed against international standards, as set out in the *Principles for Financial Market Infrastructures (PFMIs)*”.³⁵

The Riksbank’s oversight of the financial market infrastructures is based on the Sveriges Riksbank Act (1988:1385) and the responsibility assigned therein for the payment system.³⁶ In the Sveriges Riksbank report on oversight of financial infrastructures,³⁷ it is stated that: “The Riksbank expects the systems in the financial infrastructure to comply with the international principles prepared by CPSS-IOSCO. The purpose of the oversight work is to ensure this. Monitoring takes place in that the systems assess themselves, and also in that the Riksbank carries out an in-depth analysis, based on PFMI, of specific risks in the system. If the analysis indicates shortcomings in safety or efficiency in a system, the Riksbank encourages the system to rectify them.”³⁸ The Riksbank’s oversight work related to the PFMIs is overlapping with the NCA.

Conduct of oversight by EU central banks that are part of the implementation monitoring exercise

The AT found that oversight activities and an ability to induce change in areas that bring the framework applicable to CCPs towards consistency with the PFMIs sufficient to demonstrate consistency with the PFMIs for the purpose of this L2 exercise were demonstrated for seven of the eight European countries involved in the implementation monitoring exercise.

The Bank of England’s supervision of financial market infrastructures is described in its Annual Report (March 2014) (*Annual Report*), which sets forth the Bank’s powers to support its oversight and supervision of CCPs, and highlights, through specific examples, the Bank’s FMI supervision during 2014. The Bank of England’s supervisory priorities have addressed, and demonstrated its ability to induce change in areas that bring the framework applicable to CCPs towards consistency with, the PFMIs in a number of areas where the EMIR framework has gaps.³⁹ For example, the Bank’s *Annual Report* (p 9) states that: “The Bank has therefore required all supervised FMIs to work on developing recovery plans. CCPs face particular risk given the counterparty credit risks they face and the UK CCPs all have loss-allocation rules, covering their whole product range, to manage a loss arising from clearing member default that exceeds their pre-funded default resources.”

The Riksbank Oversight Report contains a section explaining in detail how the Riksbank operates in practical terms to oversee the financial infrastructure. The Riksbank relies on moral suasion to induce change or enforce corrective action. The Riksbank’s Financial Infrastructure Report 2014 notes that: “The Riksbank has no binding tools to influence participants in the financial system. Instead, the Riksbank primarily exerts influence by communication. In cases in which the Riksbank’s analysis points to deficiencies in safety or efficiency, the Riksbank discusses this with Finansinspektionen and urges the FMIs to remedy these. This takes place in the form of public statements, speeches and publications, as well as in dialogue and meetings with the FMIs (‘moral suasion’).”

³⁵ See The Bank of England’s supervision of financial market infrastructures-Annual Report (March 2014), Section 1.2, p. 5. The Annual Report is available at: <http://www.bankofengland.co.uk/publications/Documents/fmi/fmiap1403.pdf>.

³⁶ Payment system in the law has a broader meaning than the term payment system in the PFMI. Payment system in the law would for instance include both banks and all types of FMIs for instance including CCPs.

³⁷ *The Riksbank’s Oversight of the Financial Infrastructure* (Riksbank Oversight Report), available at: http://www.riksbank.se/Documents/Rapporter/Fin_infra/2012/rap_fin_infrastrukturen_120530_eng.pdf.

³⁸ *Idem* at 37. (Citing the PFMIs).

³⁹ The term “EMIR framework” refers to EMIR and the accompanying technical standards.

The Riksbank 2014 Report demonstrates its use of moral suasion to induce change in areas that bring the framework applicable to CCPs towards consistency with the PFMI. The Report publically urges one CCP to “consider establishing lines of credit beyond the concentrated Scandinavian market with the aim of further strengthening resilience towards unplanned liquidity shortages”. Similarly, with respect to the PFMI requirements for plans for recovery and orderly wind-down, the Report notes that: “The Swedish systems have not completed these plans, but work is in progress. The Riksbank regards this as a prioritised activity and considers that the plans should be completed as soon as possible.”

In its conduct of oversight of FMIs, the Eurosystem states that it could induce change or enforce corrective action through tools including moral suasion, public statements, influence stemming from its participation in systems and cooperation with other authorities and issuance of directly binding regulations or decisions within the euro area member States.

The Bank of France regularly conducts assessment of CCPs against international standards (currently the PFMI), whose high level results are disclosed in its triennial oversight reports (the last of which was published in 2011). In addition, CCPs’ implementation of important changes, such as new services, is assessed by the Bank against the PFMI. The AT has been informed that recent assessments include areas that have been assessed in the present report as gaps in EMIR.

The Deutsche Bundesbank does not publish formal reports concerning its oversight of CCPs. However, the AT has been informed that the Bundesbank conducts ongoing oversight at CCPs through regular and ad hoc meetings both at the working and management levels, regular and ad hoc data collection and related risk-based analyses, and regular and ad hoc assessments against the PFMI. The internal oversight framework identifies the core areas of oversight interest, the corresponding PFMI, the relevant information and data necessary for conducting an own assessment, the tools available for the oversight, and the regular outputs to be distributed internally up to board level.

The Bank of Italy conducts oversight of CCPs through periodic reports, ad hoc information requests, periodic on-site monitoring, meetings with top management, and letters addressed to the CEO or the Board of Directors.

The Netherlands Bank (De Nederlandsche Bank, DNB) conducts oversight of CCPs through a number of modes, including examining periodic reports, regular meetings, and on-site inspections (as necessary). A full scale assessment is made every two years on average. In case of major changes, full scale or partial assessments are also made. DNB attempts to conduct a theme based assessment every year. Conduct of such assessments is reflected in the DNB’s Reports on *Oversight of payments and settlement systems*.⁴⁰

Currently, there are no CCPs in Belgium, and thus there is no opportunity for the National Bank of Belgium (NBB) to conduct oversight of a domestic CCP. The NBB demonstrates its conduct of oversight of FMIs within its jurisdiction through its actions as an overseer for securities settlement systems/central securities depositories. These include conduct of a full-scale assessment against the PFMI.⁴¹

The Bank of France, Bundesbank, Bank of Italy, DNB and NBB have demonstrated to the AT their ability to change or to induce change in areas that bring the framework applicable to CCPs towards consistency with the PFMI through a number of examples. These include backtesting methodology and

⁴⁰ See, e.g., DNB, *Oversight of payments and settlement systems 2013* at 15–16. assessing CCPs against the CPSS-IOSCO *Recommendations for Central Counterparties*. The DNB has informed the AT that future assessments will be conducted against the PFMI. The report is available at http://www.dnb.nl/en/binaries/308949_O2013.pdf.

⁴¹ See, e.g., NBB, *Financial Stability Review 2013* at pp 128–138. The report is available at <http://www.nbb.be/doc/ts/Publications/FSR/FSR2013.pdf>.

governance⁴² (Bank of France), revising margin policies to reduce procyclicality (Bank of Italy),⁴³ changing the manner in which a CCP's participants post collateral (DNB)⁴⁴ and the requirement for FMIs to address Principles rated as "broadly observed" in a defined time frame (NBB).

The Bank of Spain has noted that the Spanish authorities are committed to assessing CCPs regularly against the PFMI in future, in accordance with the recommendation of the International Monetary Fund (IMF) pursuant to a 2012 Financial Sector Assessment Program Technical Note.⁴⁵ However, the Bank of Spain has not demonstrated that such oversight is currently being conducted. Accordingly, the AT is unable to conclude that consistency with the PFMI for CCPs in Spain has been established through oversight conducted by the Bank of Spain. The AT has been made aware of some steps taken by the Comisión Nacional del Mercado de Valores (CNMV) prior to 18 April 2014. These steps include a letter from the CNMV informing CCPs that it proposes to call for compliance with the PFMI by the infrastructures under its supervision, and requiring that CCPs complete self-assessments against the PFMI (January 2013) as well as CNMV's assessment of CCP arrangements during the EMIR re-authorisation process (September 2013 to September 2014).⁴⁶ While EMIR is the principal vehicle for implementation of the PFMI in the EU, in accordance with Article 14(5) of EMIR, this "shall not prevent member States from adopting or continuing to apply, in respect of CCPs established in their territory, additional requirements including certain requirements for authorisation under Directive 2006/48/EC." However, as previously noted, the scope of the assessment is comprised of implementation measures applicable to the European Union as a whole as well as central bank oversight measures for the eight European Union countries that participate in the CPMI-IOSCO implementation monitoring exercise. Accordingly, a detailed assessment of the aforementioned steps taken by the CNMV is out of the scope of this exercise.

3.1.4 Recent and upcoming changes

On 5 August 2014, ESMA issued a Guidelines and Recommendations report regarding the implementation of the PFMI by competent authorities as part of the exercise of their duties resulting from the authorisation and supervision of CCPs pursuant to Article 22(1) of EMIR.⁴⁷ The operative portion of the report states in full that:

"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 (PFMI). When carrying out the duties resulting from EMIR for the authorisation and supervision of CCPs, competent

⁴² See Bank of France Report on *Oversight of payment instruments and financial market infrastructures (2011)* at 17–18. The Report is available at https://www.banque-france.fr/fileadmin/user_upload/banque_de_france/Stabilite_financiere/Oversight-of-payment-instruments-and-financial-market-infrastructures-2011.pdf.

⁴³ See Bank of Italy *Financial Stability Report*, April 2012 at 38–39. The Report is available at https://www.bancaditalia.it/pubblicazioni/stabilita-finanziaria/rapporto-stabilita-finanziaria/2012/rsf_2012/en_stabfin_3_2012/1-Financial-Stability-Report.pdf.

⁴⁴ See DNB *Oversight of payment and settlement systems*, 2011, pp 18–19. The report is available at http://www.dnb.nl/en/binaries/269603_Oversight%20of%20payment%20and%20settlement%20systems%202011.pdf.

⁴⁵ See IMF, *Spain: Oversight and Supervision of Financial Market Infrastructures Technical Note*, 2012, p 7 ("Regular assessments against the CPSS/IOSCO standards should also be conducted for FMIs other than payment systems. Priority: High. Timeframe: Near term.") The Technical Note is available at <http://www.imf.org/external/pubs/ft/scr/2012/cr12144.pdf>.

⁴⁶ These included steps with respect to unallocated credit losses and replenishment of resources.

⁴⁷ See *Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties*, 5 August 2014, ESMA/2014/1009, available at <http://www.esma.europa.eu/system/files/2014-1009.pdf> ("August 2014 G&R").

authorities should ensure that CCPs established in their territory comply with these requirements in accordance with the PFMI and operate in a manner that is consistent with them.”⁴⁸

The Guidelines and Recommendations report is directed towards competent authorities and states that it is not intended to revise or add requirements applicable to CCPs.⁴⁹

The Guidelines and Recommendations report is not taken into account in the ratings shown in this report because it was published after the 18 April as-of-date set for this assessment process. The report is helpful, however, and could contribute to consistency to the extent that it mitigates ambiguities identified between the PFMI and the text of EMIR and accompanying technical standards.

3.2 TR supervision and oversight

3.2.1 Relevant regulations

As noted above, EMIR outlines the general requirements applicable to CCPs and TRs. The more detailed requirements for TRs are embodied in the RTS and ITS. For TRs, the relevant RTS and ITS are:

- Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 with regard to the minimum details of the data to be reported to TRs (*RTS on reporting*).⁵⁰
- Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 with regard to the format and frequency of trade reports to TRs (*ITS on reporting*).⁵¹
- Commission Delegated Regulation (EU) No 150/2013 of 19 December 2012 with regard to the details of the application for registration as a TR (*RTS on TR registration*).⁵²
- Commission Implementing Regulation (EU) No 1248/2012 of 19 December 2012 with regard to the format of applications for registration of TRs (*ITS on TR registration*).⁵³
- Commission Delegated Regulatory (EU) No 151/2013 of 19 December 2012 with regard to the data to be published and made available by TRs and operational standards for aggregating, comparing and accessing the data (*RTS on access to data*).⁵⁴
- Commission Delegated Regulation (EU) No 667/2014 of 13 March 2014 with regard to rules of procedure for penalties imposed on TRs by ESMA including rules on the right of defence and temporal provisions (*RTS on penalties for TRs*).⁵⁵

All the above RTS came into effect on 15 March 2013 and ITS on 10 January 2013, except for the RTS on penalties for TRs, which came into force on 22 June 2014.

⁴⁸ Idem at 16.

⁴⁹ August 2014 G&R. The language in the Cost-Benefit analysis section of the document states that: “The Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties are specific in that they do not aim to prescribe further requirements for market participants, neither do they aim to revise the existing rules and regulations to which CCPs are subject.” August 2014 G&R at 5, ¶14.

⁵⁰ See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.052.01.0001.01.ENG.

⁵¹ See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.352.01.0020.01.ENG.

⁵² See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.052.01.0025.01.ENG.

⁵³ See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.352.01.0030.01.ENG.

⁵⁴ See: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.052.01.0033.01.ENG.

⁵⁵ See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0667>.

3.2.2 Supervision

The registration and supervision of TRs is entrusted directly and exclusively to ESMA. For that purpose, ESMA has the right to require information, to conduct general investigations and on-site inspections, and, if needed, to take enforcement measures. ESMA also has the right to use specific investigatory powers. EMIR provides for three main types of investigatory power in relation to TRs: requests for information (Article 61), general investigations (Article 62) and on-site inspections (Article 63). These investigatory powers apply to supervising TRs but also to related third parties to whom the TR has outsourced operational functions or activities.

There is an obligation for TRs to provide ESMA with the information and documents (including confidential material) requested by an ESMA decision. Under Article 65 of EMIR, ESMA can impose a fine if a TR provides incorrect or misleading information in response to a request for information by ESMA, or if a TR provides incorrect or misleading answers during an investigation. ESMA can also impose periodic penalty payments under Article 66 of EMIR in order to compel a TR to supply complete information, to submit to an investigation or to submit to an on-site inspection.

ESMA has powers to induce changes or enforce corrective action in relation to TRs. In the event of an infringement by a TR, ESMA can take one or more of the following actions: require the TR to bring the infringement to an end; require the TR to submit to an investigation; require the TR to submit to an on-site inspection; impose fines; issue a public notice; and/or (as a last resort) withdraw the TR's registration.

4. Assessment and recommendations

4.1 Summary assessment of completeness and consistency with the Principles

This section provides a high-level summary of how consistent the CCP and TR regimes in the European Union are with the Principles. A more detailed assessment, including excerpts of the relevant legislation, regulation and rules, and notes explaining the assigned ratings, is provided in tabular form in Section 4.2.

4.1.1 Broad themes for the assessment

EMIR and accompanying technical standards

EMIR and its implementing regulations set forth a comprehensive legal and regulatory framework for CCPs and TRs in the European Union. The AT concluded that, when viewed holistically, the regulations contained in EMIR and its accompanying technical standards are consistent or broadly consistent with a majority of the Principles for CCPs, and to a lesser extent for TRs. In fact, in some instances the regulations set out more prescriptive requirements than those put forth in the PFMI, in particular in relation to financial risks. For example, EMIR requires all CCPs to maintain, ex ante, resources to cover the credit risk generated by the default of at least the two clearing members to which it has the largest exposures. This is in contrast to the PFMI, which require CCPs that either have a more complex risk profile or are systemically important in multiple jurisdictions to maintain this level of credit resources. Similarly, EMIR requires all CCPs to maintain, ex ante, resources to cover the liquidity shortfalls generated by the default of at least the two clearing members to which it has the largest exposures. This is in contrast to the PFMI, which require CCPs that either have a more complex risk profile or are systemically important in multiple jurisdictions to consider maintaining this level of credit resources. Finally, the EC adopted the RTS on capital requirements, which requires CCPs to hold capital for winding down, restructuring and mitigating various types of risk, such as operational and legal risk, credit and counterparty credit risk, market risk and business risk. This is in contrast to the PFMI, which require CCPs to hold capital against general business risk.

The AT also observed some gaps and inconsistencies between the EMIR framework (ie EMIR and its implementing regulatory and technical standards) and the PFMI. The AT has, however, sought to interpret any available general requirements in the EMIR framework to include specific requirements in the PFMI wherever it was reasonable to do so. It is only where the EMIR framework's requirements were incomplete such that they could not reasonably be interpreted in a manner consistent with the PFMI that the AT has found gaps. These observations fall into five broad categories: (i) ex ante planning; (ii) objectives set at the authority as opposed to FMI level; (iii) reliance on business continuity planning to address a range of risks confronted in the ordinary course of business; (iv) registration requirements versus explicit requirements for ongoing compliance; and (v) interpretations regarding the applicability of certain Principles in the PFMI. Each of these themes is discussed below.

Ex ante planning is a key and recurring requirement in the PFMI; however, in several instances, EMIR and its implementing regulations are silent in this regard. The PFMI require ex ante planning, and the ex ante establishment of rules and procedures, designed to ensure the ability of an FMI to operate in circumstances in which it may have difficulty meeting regulatory and other requirements, including during a default or other stress event. With respect to CCPs, areas requiring such planning include recovery and orderly wind-down plans (Principles 3 and 15), the allocation of uncovered credit losses (Principle 4), and the replenishment of financial resources (Principle 4) and liquidity resources that a CCP may employ during a stress event (Principle 7). EMIR and the associated RTS require CCPs to meet robust ex ante resource requirements and to meet those requirements on a continuous basis. The AT observed, however, that the EU framework does not require CCPs to have plans to address

circumstances where the CCP may be unable to meet those requirements. The lack of an explicit requirement for such ex ante planning was identified as a gap between the EU framework and the relevant Principles in the PFMI. A similar gap was identified with respect to TRs and recovery and wind-down planning (Principle 3).

The Principles in the PFMI were designed to be applied and implemented at the FMI level in order to shape an FMI's objective-setting, decision-making, risk management and operating framework. In particular, the PFMI introduced new expectations for FMIs' governance arrangements, including expectations that FMIs would be required to include, as part of their internal objectives, support for financial stability and other public interest objectives given the widespread impact their decisions can have (Principle 2). In the European Union, financial stability and other broad policy objectives are set at the authority level and are the expected outcomes of the application of EMIR to CCPs and TRs. The absence of this and other, similar direct requirements on CCPs and TRs, however, is considered a gap that affects the consistency of EMIR with certain aspects of the PFMI.

The AT considered that some of the provisions in EMIR and accompanying technical standards applicable to TRs are broadly worded and generally encompass a range of specific elements described in the PFMI. For example, overarching statements regarding the management of risk or expectations regarding business continuity planning were identified as implementation measures for a range of topics beyond operational risk, including efficiency, and in "business as usual" circumstances as opposed to during crises and other extraordinary events. While the AT recognises the European Union's efforts to meet the underlying goals of Principles 15 and 17, it did not find that these requirements were sufficient to cover all risks described in these Principles.

The primary detail concerning the European Union's requirements for TRs was found in the "regulatory technical standards specifying the details of the application for registration as a trade repository". While the AT ultimately accepted that the requirement of EMIR⁵⁶ that a registered TR shall (i) "comply at all times with the conditions for registration" and (ii) "notify ESMA of any material changes to the conditions for registration" made it possible to interpret the requirements concerning an application for registration to have ongoing effect, the general nature of these requirements, coupled with their emphasis on the registration process rather than ongoing compliance, presented challenges for the AT in evaluating the completeness of the EU framework regarding TRs.

The AT observed differences of opinion regarding the applicability of certain Principles and, thus, the need for them to be implemented or assessed. For example, the EU authorities do not view certain risks or requirements as applicable to TRs as currently structured and would consider such Principles as "not applicable". Barring a legal prohibition for certain structures, the AT concluded that the lack of an implementation measure should be a material gap. This theme arose in a number of places in the TR context (eg Principles 19 and 20).

Central banks' oversight framework for CCPs

CCPs in the European Union are also subject to oversight by central banks. The authorities responsible for the supervision and oversight of CCPs have overlapping responsibilities.

The AT has considered the central bank oversight frameworks for CCPs implemented through policy statements in the eight European countries (Belgium, France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom) that are involved in the implementation monitoring exercise.

The AT found that a legal basis for central bank oversight exists for all of these eight European countries. However, active oversight and an ability to induce change in areas that bring the framework

⁵⁶ Article 55(4).

applicable to CCPs towards consistency with the PFMI sufficient to demonstrate consistency with the PFMI were demonstrated in seven of these eight European countries.

4.1.2 CCP regime

The EMIR framework for CCPs is comprehensive, and the implementation measures are consistent with a majority of the Principles in the PFMI. Of the 22 Principles applicable to CCPs, the AT has concluded that the EMIR framework is consistent with 14, broadly consistent with four and partly consistent with four of the Principles as summarised in Table 2a.

Ratings summary for CCPs under EMIR and accompanying technical standards		Table 2a
Assessment category	Principle	
Consistent	<i>Principles 1, 5, 6, 7, 8, 10, 12, 14, 16, 17, 18, 19, 20 and 22</i>	
Broadly consistent	<i>Principles 2, 3, 9 and 13</i>	
Partly consistent	<i>Principles 4, 15, 21 and 23</i>	
Not consistent	<i>None</i>	
Not applicable	<i>None</i>	

When the oversight framework for the eight European countries (Belgium, France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom) that are involved in the implementation monitoring exercise is layered on top of the EMIR framework, it is able to bridge the identified gaps and move the ratings to “consistent” for most of these countries (Table 2b).⁵⁷

Ratings summary for CCPs overseen by the National Bank of Belgium, Bank of France, Deutsche Bundesbank, Bank of Italy, Netherlands Bank, Sveriges Riksbank and Bank of England		Table 2b
Assessment category	Principle	
Consistent	<i>Principles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23</i>	
Broadly consistent	<i>None</i>	
Partly consistent	<i>None</i>	
Not consistent	<i>None</i>	
Not applicable	<i>None</i>	

4.1.2.1 Key inconsistencies and recommendations

While the EMIR framework is consistent or broadly consistent with most of the Principles in the PFMI, it is considered to be only partly consistent in four key areas, as summarised below.

- *Credit risk (Principle 4)*: EMIR and accompanying technical standards do not require a CCP to establish ex ante rules and procedures that address how potentially uncovered credit losses would be allocated or ex ante planning for the replenishment of financial resources an FMI may employ during a stress event as set forth in Principle 4. The PFMI place considerable emphasis on ex ante planning in a number of Principles. The EMIR framework does include robust ex ante resource requirements, and CCPs are expected to meet these requirements on a continuous

⁵⁷ The AT was unable to conclude that consistency with the PFMI for CCPs in Spain has been established through oversight conducted by the Bank of Spain. Please also see Section 3.1.3, including this point, for more details.

basis. Nevertheless, the absence of a planning requirement, and of a requirement to establish ex ante rules and procedures to address uncovered credit losses, significantly impacts the completeness of the EMIR framework as compared with Principle 4. Another, less significant gap was also identified in the absence of a requirement for a CCP to document its supporting rationale for the amount of total financial resources it maintains for the purposes of Principle 4.

It is recommended that the European Union establish effective implementing measures that set (i) an explicit requirement for CCPs to establish ex ante rules and procedures regarding the allocation of uncovered credit losses and the replenishment of financial resources, and (ii) a requirement for documentation of supporting rationale for, and appropriate governance arrangements relating to, the amount of total financial resources maintained for the purposes of Principle 4.

- *General business risk (Principle 15)*: EMIR and the accompanying technical standards do not require a CCP to maintain, ex ante, a viable recovery or orderly wind-down plan, including a plan for raising additional equity should its equity fall close to or below the amount needed. The lack of a requirement for the CCP to establish, ex ante, a viable plan to address what the CCP is to do when the CCP fails to meet the capital requirements set forth in the RTS is considered a significant inconsistency with Principle 15.

It is recommended that the European Union establish effective implementing measures that address ex ante planning requirements set forth in Principle 15.

- *Efficiency and effectiveness (Principle 21)*: There are significant shortcomings between EMIR and Principle 21. Specifically, neither EMIR nor the RTS sets an expectation for a CCP to have established mechanisms to review its efficiency. In addition, the EMIR legal framework does not include a requirement that the CCP's objectives and strategies be "measurable and achievable"; however, the latter gap was considered minor in comparison. Although the RTS does require a CCP to assess the adequacy of its risk management policies, procedures and systems, this was not viewed as sufficient to address the efficiency expectations set forth in Principle 21.

It is recommended that the European Union establish effective implementing measures that address the gaps identified in Principle 21.

- *Disclosure of rules, key procedures and market data (Principle 23)*: Principle 23 sets forth a number of disclosure requirements, including an expectation that FMIs regularly complete and publicly disclose responses to the CPSS-IOSCO *Disclosure framework for financial market infrastructures*. EMIR and accompanying technical standards set a number of disclosure requirements on CCPs; however, they neither reference nor incorporate the disclosure framework in the legal framework. Accordingly, the lack of a requirement at EU level is considered a significant gap that impacts the EMIR framework's consistency with Principle 23.

It is recommended that the European Union establish effective implementing measures at EU level to require all CCPs subject to EMIR to complete the disclosures expected under Principle 23.

4.1.2.2 Other differences between the EMIR framework and the PFMI

Other, more minor gaps and differences exist between the regime and a number of other Principles. These gaps, however, have a minor impact on the completeness and consistency of the EMIR framework, whereby the regime has been assessed to be broadly consistent or consistent in those areas.

- *Legal basis (Principle 1)*: EMIR's requirement of "soundness" is interpreted to mean "legal certainty" as that term is used in this Principle. In addition, the scope of the "soundness" requirement may be considered broad enough to include analysis of scenarios where actions by

the CCP could be voided, reversed or subject to stays. Any ambiguity is viewed as a minor difference that does not impact consistency with this Principle considered as a whole.

The European Union should consider establishing measures to clarify the scope of the "soundness" requirement.

- *Governance (Principle 2)*: EMIR and accompanying technical standards do not require the CCP itself to have objectives that explicitly support financial stability as required by Principle 2. Rather, the EU authorities assert that financial stability will be achieved as a result of applying to CCPs the requirements of EMIR and accompanying technical standards. While this may be the case, this approach is inconsistent with Principle 2, which requires that these objectives be set at the FMI level. In addition, the rating reflects a minor gap with the requirement that the CCP's board should review both its overall performance and the performance of its individual board members regularly.

It is recommended that the European Union establish effective implementing measures that set expectations that (i) a CCP have objectives that explicitly support financial stability and (ii) a CCP's board shall review both its overall performance and the performance of its individual board members regularly.

- *Framework for the comprehensive management of risk (Principle 3)*: The EMIR framework was rated broadly consistent with Principle 3 because the AT identified a minor, though material, gap that influenced the overall rating. While the RTS require business continuity planning and (through requirements for reverse stress testing) require CCPs to identify scenarios (eg financial losses) that would potentially prevent the CCP from being able to provide its critical operations and services as a going concern, there are no requirements to assess the effectiveness of a full range of options for recovery and orderly wind-down, and prepare appropriate plans for recovery or orderly wind-down. The fact that the RTS on capital requirements requires analysis of the time span required for wind-down is considered insufficient to fill this gap.

It is recommended that the European Union establish effective implementing measures that address the identified gaps vis-à-vis Principle 3.

- *Liquidity risk (Principle 7)*: The implementation measures in effect under EMIR and accompanying technical standards are generally consistent with Principle 7. A potential gap was observed regarding the requirement in Principle 7 that an FMI establish explicit rules and procedures that indicate the FMI's process for the replenishment of liquidity resources. The liquidity plan required under EMIR, Article 32(3), may be interpreted to include such rules, but there is a slight ambiguity. This ambiguity is judged not to have a material impact on consistency with the Principle considered as a whole. It is recommended that the European Union establish effective implementing measures that clarify the ambiguity in Principle 7. Similarly, there is a minor ambiguity regarding the absence of rules addressing the FMI's replenishment of liquidity resources. Principle 7 requires both rules and procedures to address the FMI's replenishment of liquidity resources; however, only ex ante procedures are explicitly called for in the RTS in this regard.
- *Money settlements (Principle 9)*: In the EMIR framework, requirements related to money settlements and finality generally with regard to CCPs are set out in the Settlement Finality Directive (SFD). While the SFD ensures the finality of transfer when it occurs, there is no requirement in the current legislation that explicitly requires the CCP to state clearly when transfers on the books of individual settlement banks are expected to occur and when funds would be received in order to enable the CCP and its participants to manage credit and liquidity risks. While the Principle has been rated as broadly consistent with Principle 9, it would be beneficial if this particular gap were addressed.

It is recommended that the European Union establish effective implementing measures that require CCPs to state clearly when transfers on the books of individual settlement banks are expected to occur and when funds would be received.

- *Participant default rules and procedures (Principle 13)*: Principle 13 requires a CCP to have both rules and procedures in place to address the CCP’s replenishment of credit and liquidity resources following a stress event. Only ex ante procedures with respect to liquidity resources are established in EMIR and accompanying technical standards in this regard. There is no requirement for rules or procedures that address the replenishment of credit resources, or for rules that address the replenishment of liquidity resources.

It is recommended that that European Union establish effective implementing measures that address the gaps identified in Principle 13.

- *Operational risk (Principle 17)*: Principle 17 requires a CCP to have clearly defined operational reliability objectives and to have policies in place designed to achieve those objectives. Article 17 of the RTS on CCP requirements sets expectations for a CCP’s business continuity policy and disaster recovery plans to contain clearly defined and documented arrangements for use in the event of a business continuity emergency, disaster or crisis which are designed to ensure a minimum service level of critical functions. The phrase “minimum service levels” can be interpreted to mean that a CCP clearly define operational reliability objectives. The policies and planning required by the RTS can be interpreted as the “policies in place that are designed to achieve those objectives”. Because Article 17 focuses on business continuity, further clarity may be needed in order to help ensure that CCPs establish operational reliability objectives and monitor performance against them under normal operating conditions.

It is recommended that the European Union clarify to CCPs subject to EMIR that the “minimum service levels” include both the CCP’s operational performance objectives and committed service level targets and that the related policies and planning aspects of EMIR and accompanying technical standards cover both normal operating conditions and business continuity events.

4.1.3 TR regime

The TR regime in the European Union exhibits less completeness and consistency with the PFMIIs than the CCP regime. There are five Principles (out of the 12 Principles applicable to TRs) that the AT viewed as being partly consistent. A further four Principles were judged to be broadly consistent (Table 3).

Ratings summary for TRs in the European Union		Table 3
Assessment category	Principle	
Consistent	<i>Principles 18, 22 and 24</i>	
Broadly consistent	<i>Principles 2, 17, 19 and 20</i>	
Partly consistent	<i>Principles 1, 3, 15, 21 and 23</i>	
Not consistent	<i>None</i>	
Not applicable	<i>None</i>	

4.1.3.1 Key inconsistencies and recommendations

- *Legal basis (Principle 1)*: The AT concluded that the absence in current regulations of requirements to provide a “high degree of legal certainty for each material aspect of a TR’s activities in all relevant jurisdictions” creates a significant gap in the EU regime. In addition, the

team did not find a requirement for the TR to be able to articulate the legal basis for its activities.

It is recommended that the European Union establish effective implementing measures that address the gaps identified vis-à-vis Principle 1.

- *Framework for the comprehensive management of risks (Principle 3)*: The AT concluded that two significant gaps exist with respect to this Principle due to (i) the absence of a requirement for a TR to provide incentives to participants to help manage and contain the risks they pose to TRs, and (ii) the absence of a requirement for a TR to assess the effectiveness of a full range of options for recovery and orderly wind-down, or to prepare appropriate plans for recovery or orderly wind-down.

It is recommended that the European Union establish effective implementing measures that address the gaps identified for Principle 3.

- *General business risk (Principle 15)*: The AT concluded that two significant gaps exist with respect to this Principle due to (i) the absence of requirements in the legislation for the TR to have, ex ante, a plan for raising additional equity if required and for that plan to be reviewed regularly, and (ii) the absence of a requirement for the TR to have, ex ante, a viable recovery or orderly wind-down plan. EU authorities have indicated that draft legislation is expected in 2014 that would articulate new requirements for recovery and wind-down plans.

It is recommended that the European Union establish effective implementing measures that address the gaps identified vis-à-vis Principle 15.

- *Efficiency and effectiveness (Principle 21)*: There are significant shortcomings between EMIR and Principle 21. Specifically, neither EMIR nor the RTS sets an expectation for a TR to have established mechanisms to review its efficiency. And a requirement for clearly defined goals and objectives that is limited to business continuity is overly narrow. In addition, the EMIR legal framework does not include a requirement that the TR's objectives and strategies be "measurable and achievable"; however, the latter gap was considered minor in comparison.

It is recommended that the European Union establish effective implementing measures that address the gaps identified vis-à-vis Principle 21.

- *Disclosure of rules, key procedures and market data (Principle 23)*: The AT concluded there is a significant gap due to the absence of clear requirements for the TR to disclose rules, procedures and relevant documents and for it to adhere to the CPSS-IOSCO disclosure framework. The AT also concluded there is a minor gap due to the absence of a requirement for disclosure of the TR's design and operation.

It is recommended that the European Union establish effective implementing measures that address the gaps identified vis-à-vis Principle 23.

4.1.3.2 Other differences between the EU framework and the PFMI

Other, more minor gaps and differences exist between the TR regime and a number of the other Principles. These gaps are listed below, and are viewed as having a minor impact on the completeness and consistency of the regime with the PFMI.

- *Governance (Principle 2)*: The AT concluded that a minor gap is created by the absence in the legislation and regulations of clear requirements for the TR to have objectives that support financial stability and other relevant public interest considerations. The team also found minor gaps in consistency with this Principle, including the absence of requirements for the TR to disclose governance arrangements and major decisions to relevant parties and to regularly review the performance of its board.

It is recommended that the European Union establish effective implementing measures that address the gaps identified vis-à-vis Principle 2.

- *Operational risk (Principle 17)*: Minor gaps were considered to exist in that: (i) there is an absence of requirements for periodic review, auditing and testing of systems, procedures and controls; and (ii) there are no requirements for the TR to identify and monitor the risks that it may pose to other FMIs.

It is recommended that the European Union establish effective implementing measures that address the identified gaps vis-à-vis Principle 17.

- *Tiered participation arrangements (Principle 19)*: EU authorities represented that there is no tiered participation for TRs in the European Union, as all trades have to be reported via direct participants. However, the AT judged that tiered participation can be viewed as applicable, since a reporting entity could delegate its reporting to a third party which may or may not be a direct participant to a TR.

The AT concluded that significant gaps exist because there are no specific requirements in the legislation or regulations to address indirect participation. These gaps are mostly mitigated by the overall risk management framework used by ESMA (as alluded to in Article 21 of the RTS), which allows authorities to gather information and to monitor and manage material risks arising from tiered participation arrangements. However, minor gaps are still present, in particular because there are no requirements in the legislation or regulations that the TR should identify material dependencies between direct and indirect participants that might affect the TR.

It is recommended that the European Union establish effective implementing measures that address the gaps identified vis-à-vis Principle 19.

- *FMI links (Principle 20)*: EU authorities represented that TRs do not have direct links because they exchange files only for reconciliation purposes. The AT has determined that the exchange of files between TRs is a link between TRs because its failure could affect a major feature of a TR (eg availability of timely completed and accurate data from reporting entities).

The absence of the requirement that a link should have a well founded legal basis in all relevant jurisdictions and the assessment of additional operational risks related to links (collectively) mean an impact on consistency with this Principle.

It is recommended that the European Union establish effective implementing measures that address the gaps identified vis-à-vis Principle 20.

4.2 EMIR and RTS completeness and consistency with the Principles – Review and recommendations

4.2.1 CCPs

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p>Principle 1: Legal basis</p> <p>An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.</p>		<p>Consistent</p> <p>EMIR’s requirement of “soundness” is interpreted to mean “legal certainty” as that term is used in this principle, Although EMIR and the RTS do not include explicit references to elements in KC4, the scope of the “soundness” requirement may be considered broad enough to include analysis of scenarios where actions by the CCP could be voided, reversed, or subject to stays. Any ambiguity is viewed as a minor difference that does not impact consistency with this Principle considered as a whole.</p>	<p>The EU is recommended to implement measures that clarify the scope of the “soundness” requirement.</p>
<p>1. <i>The legal basis should provide a high degree of certainty for each material aspect of an FMI's activities in all relevant jurisdictions.</i></p>	<p>RTS on CCP Requirements Art 5(2) and 5(4)</p>		
<p>2. <i>An FMI should have rules, procedures, and contracts that are clear, understandable, and consistent with relevant laws and regulations.</i></p>	<p>RTS on CCP Requirements Art 5(1) to 5(4)</p>		
<p>3. <i>An FMI should be able to articulate the legal basis for its activities to relevant authorities, participants, and, where relevant, participants' customers, in a clear and understandable way.</i></p>	<p>RTS on CCP Requirements Art 5(2), 5(4), 10(1)(b)(iv) and 10(1)(b)(vii), 10(1) EMIR Art 38(2)</p>		

⁵⁸ Only the relevant principles for CCPs (as set forth in the annex E of the PFMI) are included.

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
4. <i>An FMI should have rules, procedures, and contracts that are enforceable in all relevant jurisdictions. There should be a high degree of certainty that actions taken by the FMI under such rules and procedures will not be voided, reversed, or subject to stays.</i>	RTS on CCP Requirements Art 5(2) and 5(4)	EMIR's requirement of "soundness" is interpreted to mean "legal certainty" as that term is used in this principle, Neither EMIR or the RTS make an explicit reference to "the actions taken by the CCP under such rules and procedures will not be voided, reversed, or subject to stays," the "soundness" requirement may be considered broad enough to include such scenarios. This is viewed as a minor gap and does not impact the overall rating of this principle.	
5. <i>An FMI conducting business in multiple jurisdictions should identify and mitigate the risks arising from any potential conflict of laws across jurisdictions.</i>	RTS on CCP Requirements Art 5(4)		
<p>Principle 2: Governance</p> <p>An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.</p>		<p>Broadly consistent</p> <p>There are minor gaps in the context of KC1 and KC3 which are the basis for the rating. Specifically, EMIR and the RTS do not require the CCP itself to have objectives that explicitly support financial stability. KC1 sets out key elements of the headline standard. In addition, the rating reflects a minor gap with respect to KC3 (requirement that the board should review both its overall performance and the performance of its individual board members regularly).</p>	<p>The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC1 and KC3.</p>

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
1. <i>An FMI should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and other relevant public interest considerations.</i>	EMIR art 23 and 24 CCP Requirements Art 7(2)(a)	EMIR does not include a requirement that CCPs have objectives that include an emphasis on financial stability. Gap is created by the absence of requirements in legislation requiring that the FMI <i>itself</i> have objectives that explicitly support s financial stability.	
2. <i>An FMI should have documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements should be disclosed to owners, relevant authorities, participants, and, at a more general level, the public.</i>	EMIR Art 26(1) and Art 26(7) RTS on CCP Requirements Art 3(1), 3(3), 7(1), 7(6), 10(1) and 10(2)		
3. <i>The roles and responsibilities of an FMI's board of directors (or equivalent) should be clearly specified, and there should be documented procedures for its functioning, including procedures to identify, address, and manage member conflicts of interest. The board should review both its overall performance and the performance of its individual board members regularly.</i>	EMIR Art 26(1), 27(3) and 33(1) RTS on CCP Requirements Art 3(5), 3(6), 7(1) and 7(5)	EMIR and the RTS reflect several elements of this KC except a requirement for the CCP board to review its overall performance and the performance of its individual board members regularly. The gap related to these reviews is considered minor.	
	EMIR Art 33(2) to 33(5) RTS on CCP Requirements Art 3(4)		
4. <i>The board should contain suitable members with the appropriate skills and incentives to fulfil its multiple roles. This typically requires the inclusion of non-executive board member(s).</i>	EMIR Art 27(2) and 27(3)		
5. <i>The roles and responsibilities of management should be clearly specified. An FMI's management should have the appropriate experience, a mix of skills, and the integrity necessary to discharge their responsibilities for the operation and risk management of the FMI.</i>	EMIR Art 2(28) and 26(1) RTS on CCP Requirements Art 3(1), 3(3), 7(1), 7(3) and 7(6)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
6. <i>The board should establish a clear, documented risk-management framework that includes the FMI's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. Governance arrangements should ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board.</i>	EMIR Art 26(1), 26(4), 27(3) and 48(1) RTS on CCP Requirements Art 3(1) and 3(6), 4(1) to 4(8), 6(1), 6(2) and 11(1)		
7. <i>The board should ensure that the FMI's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.</i>	EMIR Art 36(1) and 38(2) RTS on CCP Requirements Art 4(5), 10(1) and 10(2)		
<p>Principle 3: Framework for the comprehensive management of risks</p> <p>An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.</p>		<p>Broadly consistent</p> <p>The gap regarding KC4 is material and has influenced the overall rating. While the RTS require business continuity planning and the requirements for reverse stress testing require CCPs to identify scenarios (eg, financial losses) that would potentially prevent the FMI from being able to provide its critical operations and services as a going concern, there are no requirements to assess the effectiveness of a full range of options for recovery and orderly wind-down, and prepare appropriate plans for recovery or orderly wind-down. The fact that RTS on Capital Requirements require analysis of the time span required for wind-down is insufficient to fill this gap.</p>	<p>The EU is recommended to implement measures that address the gaps or inconsistencies identified.</p>

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
1. <i>An FMI should have risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by the FMI. Risk-management frameworks should be subject to periodic review.</i>	RTS on CCP Requirements Art 3(6), 4(1), 4(3) to 4(7)		
2. <i>An FMI should provide incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the FMI.</i>	EMIR Art 37(3) RTS on CCP Requirements Art 4(1)		
3. <i>An FMI should regularly review the material risks it bears from and poses to other entities (such as other FMIs, settlement banks, liquidity providers, and service providers) as a result of interdependencies and develop appropriate risk-management tools to address these risks.</i>	RTS on CCP Requirements Art 4(2)		
4. <i>An FMI should identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. An FMI should prepare appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Where applicable, an FMI should also provide relevant authorities with the information needed for purposes of resolution planning.</i>	RTS on CCP Requirements Art 17(1) to 17(6), 18(1) to 18(3), 19(4) RTS on Capital Requirements 2(1) to 2(4)	While the RTS require business continuity planning, there are no requirements for CCPs to identify scenarios (eg, financial losses) that would potentially prevent the FMI from being able to provide its critical operations and services as a going concern, assess the effectiveness of a full range of options for recovery and orderly wind-down, and prepare appropriate plans for recovery or orderly wind-down. The fact that the RTS on Capital Requirements require analysis of the time span required for wind-down is insufficient to fill this gap.	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p>Principle 4: Credit risk</p> <p>An FMI should effectively measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. An FMI should maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions.</p>		<p>Partly consistent</p> <p>The rationale for this rating is based on a significant gap regarding the absence of a requirement that an FMI establish ex ante rules and procedures that address how potentially uncovered credit losses would be allocated and the replenishment of financial resources an FMI may employ during a stress event as set forth in Key Consideration 7. There is also a minor gap regarding the absence of the requirement to document the CCP's supporting rationale and have appropriate governance arrangements relating to the amount of total financial resources the CCP maintains as set forth in Key Consideration 4.</p>	<p>The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC4 and KC7.</p>
<p>1. <i>An FMI should establish a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing, and settlement processes. Credit exposure may arise from current exposures, potential future exposures, or both.</i></p>	<p>EMIR Art 40 and 41(1)</p>		
<p>2. <i>An FMI should identify sources of credit risk, routinely measure and monitor credit exposures, and use appropriate risk-management tools to control these risks.</i></p>	<p>EMIR Art 41(1) to 41(4), 42 and 43 RTS CCP Requirements Art 24 to 31</p>		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p>4. A CCP should cover its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources (see Principle 5 on collateral and Principle 6 on margin). In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions. In all cases, a CCP should document its supporting rationale for, and should have appropriate governance arrangements relating to, the amount of total financial resources it maintains.</p>	<p>EMIR Art 41(1), 42(3) and 43(2)</p> <p>RTS on CCP Requirements Art 4(1) to 4(7), 29(1) to 29(3), 30(1) to 30(3), 31, 35(1) to 35(3), 36(1), 36(2), 53(1) and 53(2)</p>	<p>There is a minor gap regarding the absence of the requirement to document the CCP's supporting rationale and have appropriate governance arrangements relating to the amount of total financial resources the CCP maintains.</p>	
<p>5. A CCP should determine the amount and regularly test the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing. A CCP should have clear procedures to report the results of its stress tests to appropriate decision makers at the CCP and to use these results to evaluate the adequacy of and adjust its total financial resources. Stress tests should be performed daily using standard and predetermined parameters and assumptions. On at least a monthly basis, a CCP should perform a comprehensive and thorough analysis of stress testing scenarios, models, and underlying parameters and assumptions used to ensure they are</p>	<p>EMIR Art 42(3) and Art 49(1)</p> <p>RTS on CCP Requirements Art 47(1) to 47(7), 48(1) to 48(4), 51(1) to 51(8), 52(1), 52(2), 53(1) to 53 (5), 55(1) to 55(3), 56(1) to 56(5), 57(1) to 57(4), 59(1), 59(4), 59(5), 59 (7), 59(11), 60(1) and 60(2)</p>		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p><i>appropriate for determining the CCP's required level of default protection in light of current and evolving market conditions. A CCP should perform this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by a CCP's participants increases significantly. A full validation of a CCP's risk-management model should be performed at least annually.</i></p>			
<p>6. <i>In conducting stress testing, a CCP should consider the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.</i></p>	<p>EMIR Art 42(3) and Art 49(1) RTS CCP Requirements Art 25(1), 26(1), 26(2)(b), 26(3), 51(5), 53(3), 53(5) and 54(3)</p>		
<p>7. <i>An FMI should establish explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the FMI. These rules and procedures should address how potentially uncovered credit losses would be allocated, including the repayment of any funds an FMI may borrow from liquidity providers. These rules and procedures should also indicate the FMI's process to replenish any financial resources that the FMI may employ during a stress event, so that the FMI can continue to operate in a safe and sound manner.</i></p>		<p>There is no requirement in the current regulations that requires the CCP to establish ex ante rules and procedures that address how potentially uncovered credit losses would be allocated and the replenishment of financial resources the CCP may employ during a stress event.</p>	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p>Principle 5: Collateral</p> <p>An FMI that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks. An FMI should also set and enforce appropriately conservative haircuts and concentration limits.</p>		Consistent	
1. <i>An FMI should generally limit the assets it (routinely) accepts as collateral to those with low credit, liquidity, and market risks.</i>	EMIR Art 46(1) RTS CCP Requirements Art 38, 39 and Annex I, Sections 1–3		
2. <i>An FMI should establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions.</i>	EMIR Art 46(1) RTS CCP Requirements Art. 39, 40 and Annex I, Section 1		
3. <i>In order to reduce the need for procyclical adjustments, an FMI should establish stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent.</i>	RTS on CCP Requirements Art 41		
4. <i>An FMI should avoid concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects.</i>	RTS on CCP Requirements Art 42		
5. <i>An FMI that accepts cross-border collateral should mitigate the risks associated with its use and ensure that the collateral can be used in a timely manner.</i>	EMIR Art 46(1) RTS on CCP Requirements Art. 37, 44 and Annex I, Section 1		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
6. <i>An FMI should use a collateral management system that is well-designed and operationally flexible.</i>	RTS on CCP Requirements Art 40		
Principle 6: Margin			
A CCP should cover its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.			
1. <i>A CCP should have a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves.</i>	EMIR Art 41(4) RTS CCP Requirements Art 24	Consistent	
2. <i>A CCP should have a reliable source of timely price data for its margin system. A CCP should also have procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.</i>	EMIR Art 40 RTS CCP Requirements Art 47(5) and 47(6)		
3. <i>A CCP should adopt initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Initial margin should meet an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure. For a CCP that calculates margin at the portfolio level, this requirement applies to each portfolio's distribution of future exposure. For a CCP that calculates margin at more-granular levels, such as at the subportfolio level or by product, the requirement must be met for the corresponding distributions of future exposure. The model should (a) use a conservative estimate of the time horizons for the effective hedging or close out of the particular types of products</i>	EMIR Art 41(1) and 41(4) RTS CCP Requirements Art 24 to 28		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>cleared by the CCP (including in stressed market conditions), (b) have an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, and (c) to the extent practicable and prudent, limit the need for destabilising, procyclical changes.</i>			
4. <i>A CCP should mark participant positions to market and collect variation margin at least daily to limit the build-up of current exposures. A CCP should have the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants.</i>	EMIR Art 40, 41(1) and 41(3)		
5. <i>In calculating margin requirements, a CCP may allow offsets or reductions in required margin across products that it clears or between products that it and another CCP clear, if the risk of one product is significantly and reliably correlated with the risk of the other product. Where two or more CCPs are authorised to offer cross-margining, they must have appropriate safeguards and harmonised overall risk-management systems.</i>	EMIR Art 41(4) RTS CCP Requirements Art 27		
6. <i>A CCP should analyse and monitor its model performance and overall margin coverage by conducting rigorous daily backtesting and at least monthly, and more-frequent where appropriate, sensitivity analysis. A CCP should regularly conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears. In conducting sensitivity analysis of the model's coverage, a CCP should take into account a wide range of parameters and assumptions that reflect possible market conditions, including the most-volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices.</i>	EMIR Art 49(1) RTS CCP Requirements Art 48 to 53, 56, 57, 59(3) to 59(5), 59(7) to 59(11) and 60		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
7. <i>A CCP should regularly review and validate its margin system.</i>	EMIR Art 41(2) and 49(1) RTS CCP Requirements Art 47(1) to 47(4), 47(7), 59(1) and 59(3)		
<p>Principle 7: Liquidity risk</p> <p>An FMI should effectively measure, monitor, and manage its liquidity risk. An FMI should maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible market conditions.</p>		<p>Consistent</p> <p>The implementation measures in effect under EMIR and the RTS are generally consistent with the liquidity risk principle. A minor difference was observed with respect to KC10 that requires an FMI to establish explicit rules and procedures that indicate the FMI's process for the replenishment of liquidity resources. The liquidity plan required under EMIR Art 32(3) may be interpreted to include such rules. This difference is judged to not have a material impact on consistency with the Principle considered as a whole.</p>	<p>The EU is recommended to implement measures that clarify the ambiguity in KC10.</p>
1. <i>An FMI should have a robust framework to manage its liquidity risks from its participants, settlement banks, nostro agents, custodian banks, liquidity providers, and other entities.</i>	EMIR Art 44(1) RTS CCP Requirements Art 32(1) to 32(5)		
2. <i>An FMI should have effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity.</i>	EMIR Art 40 and 44(1) RTS CCP Requirements 32(1), 32(3) and 32(6)		
4. <i>A CCP should maintain sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments, and meet other payment obligations</i>	EMIR Art 44(1) RTS CCP Requirements Art 32(2) and 54(3)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p><i>on time with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation to the CCP in extreme but plausible market conditions. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should consider maintaining additional liquidity resources sufficient to cover a wider range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would generate the largest aggregate payment obligation to the CCP in extreme but plausible market conditions.</i></p>			
<p>5. <i>For the purpose of meeting its minimum liquid resource requirement, an FMI's qualifying liquid resources in each currency include cash at the central bank of issue and at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps, and committed repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions. If an FMI has access to routine credit at the central bank of issue, the FMI may count such access as part of the minimum requirement to the extent it has collateral that is eligible for pledging to (or for conducting other appropriate forms of transactions with) the relevant central bank. All such resources should be available when needed.</i></p>	<p>RTS on CCP Requirements Art 33(1) to 33(3)</p>		
<p>6. <i>An FMI may supplement its qualifying liquid resources with other forms of liquid resources. If the FMI does so, then these liquid resources should be in the form of assets that are likely to be saleable or acceptable as collateral for lines of credit, swaps, or repos on an ad hoc basis following a default, even if this cannot be</i></p>	<p>RTS on CCP Requirements Art 33(1) to 33(3)</p>		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p><i>reliably prearranged or guaranteed in extreme market conditions. Even if an FMI does not have access to routine central bank credit, it should still take account of what collateral is typically accepted by the relevant central bank, as such assets may be more likely to be liquid in stressed circumstances. An FMI should not assume the availability of emergency central bank credit as a part of its liquidity plan.</i></p>			
<p>7. <i>An FMI should obtain a high degree of confidence, through rigorous due diligence, that each provider of its minimum required qualifying liquid resources, whether a participant of the FMI or an external party, has sufficient information to understand and to manage its associated liquidity risks, and that it has the capacity to perform as required under its commitment. Where relevant to assessing a liquidity provider's performance reliability with respect to a particular currency, a liquidity provider's potential access to credit from the central bank of issue may be taken into account. An FMI should regularly test its procedures for accessing its liquid resources at a liquidity provider.</i></p>	<p>RTS on CCP Requirements Art 33(4) to 33(6)</p>		
<p>8. <i>An FMI with access to central bank accounts, payment services, or securities services should use these services, where practical, to enhance its management of liquidity risk.</i></p>	<p>EMIR Art 47(3), (4), 50(1)</p>		
<p>9. <i>An FMI should determine the amount and regularly test the sufficiency of its liquid resources through rigorous stress testing. An FMI should have clear procedures to report the results of its stress tests to appropriate decision makers at the FMI and to use these results to evaluate the adequacy of and adjust its liquidity risk-management framework. In conducting stress testing, an FMI should consider a wide range of relevant scenarios. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves,</i></p>	<p>RTS on CCP Requirements Art 47(1) to 47(4), 48, 51, 54, 56, 57, 59(2), 59(6), 59(7), 59(11) and 60</p>		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p><i>multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. Scenarios should also take into account the design and operation of the FMI, include all entities that might pose material liquidity risks to the FMI (such as settlement banks, nostro agents, custodian banks, liquidity providers, and linked FMIs), and where appropriate, cover a multiday period. In all cases, an FMI should document its supporting rationale for, and should have appropriate governance arrangements relating to, the amount and form of total liquid resources it maintains.</i></p>			
<p>10. An FMI should establish explicit rules and procedures that enable the FMI to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants. These rules and procedures should address unforeseen and potentially uncovered liquidity shortfalls and should aim to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. These rules and procedures should also indicate the FMI's process to replenish any liquidity resources it may employ during a stress event, so that it can continue to operate in a safe and sound manner.</p>	<p>EMIR Art 44(1) RTS CCP Requirements Art 32(2), 32(3) and 33(1)</p>	<p>There is a minor gap regarding the absence of rules addressing the FMI's replenishment of liquidity resources as set forth in Key Consideration 10. Key Consideration 10 requires both rules and procedures to address the FMI's replenishment of liquidity resources, however, only ex ante procedures are established in the regulations in this regard.</p>	
<p>Principle 8: Settlement finality An FMI should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time.</p>		<p>Consistent</p>	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
1. <i>An FMI's rules and procedures should clearly define the point at which settlement is final.</i>	EMIR Art 17(4) and 50(2) Directive 98/26/EC (Directive of the European Parliament and Council on settlement finality in payment and securities settlement systems)(SFD) CSDR 39(5) SFD Art 3(1) to 3(3), 4, 5, 6(1) to 6(3), 7 and 8		
2. <i>An FMI should complete final settlement no later than the end of the value date, and preferably intraday or in real time, to reduce settlement risk.</i>	EMIR Art 34(1) RTS on CCP Requirements Art 17(6) SFD Art 3(1) to 3(3), 4, 5, 6(1) to 6(3), 7 and 8 CSDR Art 39		
3. <i>An FMI should clearly define the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a participant.</i>	EMIR Art 50(2) SFD Art 3(1) to 3(3), 4, 5, 6(1) to 6(3), 7 and 8		
Principle 9: Money settlements An FMI should conduct its money settlements in central bank money where practical and available. If central bank money is not used, an FMI should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money.		Broadly consistent The rating is driven by the importance of the gap with respect to KC5, specifically, while the Settlement Finality Directive clearly establishes finality of transfer when it occurs, there is no requirement in the current legislation that explicitly requires the CCP to state clearly when	The EU is recommended to implement measures that address the gaps or inconsistencies identified.

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
		transfers on the books of individual settlement banks are expected to occur and when funds would be received in order to enable the FMI and its participants to manage credit and liquidity risks.	
1. <i>An FMI should conduct its money settlements in central bank money, where practical and available, to avoid credit and liquidity risks.</i>	EMIR Art 50(1)		
2. <i>If central bank money is not used, an FMI should conduct its money settlements using a settlement asset with little or no credit or liquidity risk.</i>	EMIR Art 50(1)		
3. <i>If an FMI settles in commercial bank money, it should monitor, manage, and limit its credit and liquidity risks arising from the commercial settlement banks. In particular, an FMI should establish and monitor adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalisation, access to liquidity, and operational reliability. An FMI should also monitor and manage the concentration of credit and liquidity exposures to its commercial settlement banks.</i>	EMIR Art 50(1) RTS on CCP Requirements Art 32(4), 45(1) and 45(2)		
4. <i>If an FMI conducts money settlements on its own books, it should minimise and strictly control its credit and liquidity risks.</i>	EMIR Art 50(1) RTS on Capital Requirements Art 4(1) to 4(3), 32 (4), 45(1) and 45(2) SFD Art 3(1) to 3(3), 4, 5, 6(1) to 6(3), 7 and 8		
5. <i>An FMI's legal agreements with any settlement banks should state clearly when transfers on the books of individual settlement banks are expected to occur, that transfers are to be final when effected,</i>	EMIR Art 50(1) and 50(2) RTS on CCP Requirements	While the settlement finality directive ensures finality of transfer when it occurs, there is no requirement in the current legislation that	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>and that funds received should be transferable as soon as possible, at a minimum by the end of the day and ideally intraday, in order to enable the FMI and its participants to manage credit and liquidity risks.</i>	Art 32(4), 45(1) and 45(2)	explicitly requires the CCP to state clearly when transfers on the books of individual settlement banks are expected to occur and when funds would be received in order to enable the FMI and its participants to manage credit and liquidity risks.	
<p>Principle 10: Physical deliveries</p> <p>An FMI should clearly state its obligations with respect to the delivery of physical instruments or commodities and should identify, monitor, and manage the risks associated with such physical deliveries.</p>		Consistent	
1. <i>An FMI's rules should clearly state its obligations with respect to the delivery of physical instruments or commodities.</i>	EMIR Art 50(2) Markets in Financial Instruments Directive 2004/39/EC (known as 'MiFID'), definitions (1) – (10)		
2. <i>An FMI should identify, monitor, and manage the risks and costs associated with the storage and delivery of physical instruments or commodities.</i>	RTS on CCP Requirements Art 4(1) to 4(3)		
<p>Principle 12: Exchange-of-value settlement systems</p> <p>If an FMI settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it should eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.</p>		Consistent	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
1. <i>An FMI that is an exchange-of-value settlement system should eliminate principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs, regardless of whether the FMI settles on a gross or net basis and when finality occurs.</i>	EMIR Art 50(1) to 50(3)		
<p>Principle 13: Participant-default rules and procedures</p> <p>An FMI should have effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should be designed to ensure that the FMI can take timely action to contain losses and liquidity pressures and continue to meet its obligations.</p>		<p>Broadly consistent</p> <p>The rationale for this rating is based on a minor gap regarding the absence of rules addressing the FMI's replenishment of resources following a stress event as set forth in Key Consideration 1. Key Consideration 1 requires both rules and procedures to address the FMI's replenishment of resources. This includes both credit and liquidity resources. However, only ex ante procedures with respect to liquidity resources are established in the regulations in this regard. There is no requirement for rules or procedures that address the replenishment of credit resources, or for rules that address the replenishment of liquidity resources. The rating reflects the relevance of Key Consideration 1 to the headline standard.</p>	<p>The EU is recommended to implement measures that address the gaps or inconsistencies identified.</p>
1. <i>An FMI should have default rules and procedures that enable the FMI to continue to meet its obligations in the event of a participant default and that address the replenishment of resources following a default.</i>	EMIR Art 42(1), 43(2) and 48(1) RTS on CCP Requirements Art 5(1), 32(2), 32(3) and 36(3)	There is a minor gap regarding the absence of rules addressing the FMI's replenishment of resources following a stress event. The Key Consideration requires both rules and procedures to address the FMI's replenishment of resources. This includes both credit and	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
		liquidity resources. However, only ex ante procedures with respect to liquidity resources are established in the regulations in this regard. There is no requirement for rules or procedures that address the replenishment of credit resources, or for rules that address the replenishment of liquidity resources.	
2. <i>An FMI should be well prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules.</i>	EMIR Art 48(1) and 48 (2)		
3. <i>An FMI should publicly disclose key aspects of its default rules and procedures.</i>	RTS on CCP Requirements Art 5(2), 10(1)(b)(i), (iv), (vii)(5), 10(2), 10(3) and 61(2)		
4. <i>An FMI should involve its participants and other stakeholders in the testing and review of the FMI's default procedures, including any close-out procedures. Such testing and review should be conducted at least annually or following material changes to the rules and procedures to ensure that they are practical and effective.</i>	EMIR Art 28(3) and 49(2) RTS on CCP Requirements Art 58 and 59(12)		
Principle 14: Segregation and portability A CCP should have rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCP with respect to those positions.		Consistent	
1. <i>A CCP should, at a minimum, have segregation and portability arrangements that effectively protect a participant's customers'</i>	EMIR Art 39 RTS on CCP Requirements		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>positions and related collateral from the default or insolvency of that participant. If the CCP additionally offers protection of such customer positions and collateral against the concurrent default of the participant and a fellow customer, the CCP should take steps to ensure that such protection is effective.</i>	5(2)		
2. <i>A CCP should employ an account structure that enables it readily to identify positions of a participant's customers and to segregate related collateral. A CCP should maintain customer positions and collateral in individual customer accounts or in omnibus customer accounts.</i>	EMIR Art 39(2), 39(3) and 39(9)		
3. <i>A CCP should structure its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting participant's customers will be transferred to one or more other participants.</i>	EMIR Art 48(5) and 48(6)		
4. <i>A CCP should disclose its rules, policies, and procedures relating to the segregation and portability of a participant's customers' positions and related collateral. In particular, the CCP should disclose whether customer collateral is protected on an individual or omnibus basis. In addition, a CCP should disclose any constraints, such as legal or operational constraints, that may impair its ability to segregate or port a participant's customers' positions and related collateral.</i>	EMIR Art 38(2), 39(7) and 39(8) RTS on CCP Requirements Art 10(1)(b) (iv), (vii)(5)		
Principle 15: General business risk An FMI should identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those		Partly consistent This rating is driven by the significant gaps regarding KC3 and KC5 and the absence of requirements that a CCP maintain ex ante a viable recovery or orderly wind-down plan,	The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.		including a plan for raising additional equity should its equity fall close to or below the amount needed.	those related to KC3 and KC5.
1. <i>An FMI should have robust management and control systems to identify, monitor, and manage general business risks, including losses from poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses.</i>	EMIR Art 16(2) and 26(1) RTS on Capital Requirements Art 3(3), 3(5), 3(6), 4(1), 4(3) and 4(4)		
2. <i>An FMI should hold liquid net assets funded by equity (such as common stock, disclosed reserves, or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity an FMI should hold should be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.</i>	EMIR Art 16(2) RTS on Capital Requirements Art 1(1), 3(1) to 3(7), 4(1) to 4(5), 5(1) and 5(2)		
3. <i>An FMI should maintain a viable recovery or orderly wind-down plan and should hold sufficient liquid net assets funded by equity to implement this plan. At a minimum, an FMI should hold liquid net assets funded by equity equal to at least six months of current operating expenses. These assets are in addition to resources held to cover participant defaults or other risks covered under the financial resources principles. However, equity held under international risk-based capital standards can be included where relevant and appropriate to avoid duplicate capital requirements.</i>	EMIR Art 16(2) RTS on Capital Requirements Art 2(1) to 2(4)	There is no requirement in the current legislation that the FMI have ex ante a viable recovery or orderly window-down plan.	
4. <i>Assets held to cover general business risk should be of high quality and sufficiently liquid in order to allow the FMI to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.</i>	EMIR 47(1) RTS on Capital Requirements Art 2(4), 43(1), Annex II and Art 44(1)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
5. <i>An FMI should maintain a viable plan for raising additional equity should its equity fall close to or below the amount needed. This plan should be approved by the board of directors and updated regularly.</i>	RTS on Capital Requirements Art 1(1), 1(3), 1(4) and 5(1)	The RTS require notification of authorities, and requires the CCP to meet standards, and to detect a risk of failure to do so, but does not require an ex ante viable plan by the CCP address what the CCP is to do when the CCP fails to meet the requirement.	
Principle 16: Custody and investment risks			
An FMI should safeguard its own and its participants' assets and minimise the risk of loss on and delay in access to these assets. An FMI's investments should be in instruments with minimal credit, market, and liquidity risks.			
1. <i>An FMI should hold its own and its participants' assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls that fully protect these assets.</i>	EMIR Art 47(3) to 47(5) RTS on CCP Requirements Art 44(1) to 44(3), 45(1) and 45(2)	Consistent	
2. <i>An FMI should have prompt access to its assets and the assets provided by participants, when required.</i>	EMIR Art 47(1) RTS on CCP Requirements Art 43(1), Annex II, and Art 44(1)		
3. <i>An FMI should evaluate and understand its exposures to its custodian banks, taking into account the full scope of its relationships with each.</i>	EMIR Art 47(7) RTS on CCP Requirements Art 45(1) to 45(7)		
4. <i>An FMI's investment strategy should be consistent with its overall risk-management strategy and fully disclosed to its participants, and investments should be secured by, or be claims on, high-quality obligors. These investments should allow for quick</i>	EMIR Art 47(1) and 47(7) RTS on CCP Requirements Art 10(1)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>liquidation with little, if any, adverse price effect.</i>			
<p>Principle 17: Operational risk</p> <p>An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.</p>		<p>Consistent</p> <p>The RTS on CCP requirements Article 17 paragraph 4 states, "The business continuity policy and disaster recovery plan shall contain clearly defined and documented arrangements for use in the event of a business continuity emergency, disaster or crisis which are designed to ensure a minimum service level of critical functions". The phrase "minimum service levels" can be interpreted to mean that a CCP clearly define operational reliability objectives. The planning required can be interpreted as the "policies in place that are designed to achieve those objectives." The rating reflects this interpretation.</p>	<p>The EU is recommended to clarify that "minimum service levels" include both the CCP's operational performance objectives and committed service-level targets, and that the related policies and planning aspects of EMIR and the RTS cover both normal operating conditions and business continuity events.</p>
<p>1. <i>An FMI should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks.</i></p>	<p>EMIR Art 16(2) RTS on CCP Requirements Art 3(6), 4(1), 4(3) to 4(7) RTS on Capital Requirements Art 3(1) to 3(7)</p>		
<p>2. <i>An FMI's board of directors should clearly define the roles and responsibilities for addressing operational risk and should endorse the FMI's operational risk-management framework. Systems, operational policies, procedures, and controls should be reviewed,</i></p>	<p>EMIR Art 26(1), 26(4) and 49(1) RTS on CCP Requirements Art 3(6), 4(1) to 4(8), 6(1),</p>		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>audited, and tested periodically and after significant changes.</i>	6(2), 11(1) to 11(5) RTS on Capital Requirements Art 3(3)		
3. <i>An FMI should have clearly defined operational reliability objectives and should have policies in place that are designed to achieve those objectives.</i>	RTS on CCP Requirements Art 4(4), 17(1) to 17(7), 18(1) to 18(3), 19(4) RTS on Capital Requirements Art 3(3) to 3(5)	The RTS on CCP requirements Article 17 paragraph 4 states, "The business continuity policy and disaster recovery plan shall contain clearly defined and documented arrangements for use in the event of a business continuity emergency, disaster or crisis which are designed to ensure a minimum service level of critical functions". The phrase "minimum service levels" can be interpreted to mean that a CCP clearly define operational reliability objectives. The planning required can be interpreted as the "policies in place that are designed to achieve those objectives."	
4. <i>An FMI should ensure that it has scalable capacity adequate to handle increasing stress volumes and to achieve its service-level objectives.</i>	RTS on CCP Requirements Art 9(1)		
5. <i>An FMI should have comprehensive physical and information security policies that address all potential vulnerabilities and threats.</i>	RTS on CCP Requirements Art 9(2) to 9(5) RTS on Capital Requirements Art 4(1) to 4(3)		
6. <i>An FMI should have a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan should incorporate the use of a secondary site and should be designed to ensure that critical information technology (IT)</i>	RTS on CCP Requirements Art 17(1) to 17(7), 18(1) to 18(4), 19(1) to 19(4), 20(1), 20(2), 21(1) and 21(2)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>systems can resume operations within two hours following disruptive events. The plan should be designed to enable the FMI to complete settlement by the end of the day of the disruption, even in case of extreme circumstances. The FMI should regularly test these arrangements.</i>			
7. <i>An FMI should identify, monitor, and manage the risks that key participants, other FMIs, and service and utility providers might pose to its operations. In addition, an FMI should identify, monitor, and manage the risks its operations might pose to other FMIs.</i>	RTS on CCP Requirements Art 4(2)		
Principle 18: Access and participation requirements			
An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.			
1. <i>An FMI should allow for fair and open access to its services, including by direct and, where relevant, indirect participants and other FMIs, based on reasonable risk-related participation requirements.</i>	EMIR Art 37(1) and 37(4) RTS on Indirect Clearing Art 2(1), 3(1) and 4(1)	Consistent	
2. <i>An FMI's participation requirements should be justified in terms of the safety and efficiency of the FMI and the markets it serves, be tailored to and commensurate with the FMI's specific risks, and be publicly disclosed. Subject to maintaining acceptable risk control standards, an FMI should endeavour to set requirements that have the least-restrictive impact on access that circumstances permit.</i>	EMIR Art 26(7), 37(2), (5), (6) RTS on CCP Requirements Art 10(1)(b)(iv), (vii)(1) and 10(3)		
3. <i>An FMI should monitor compliance with its participation requirements on an ongoing basis and have clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a participant that breaches, or no longer meets, the</i>	EMIR Art 37(2) and 48(1) RTS on CCP Requirements Art 10(1)(b)(i) and 10(1)(d)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>participation requirements.</i>	and 10(3)		
Principle 19: Tiered participation arrangements			
An FMI should identify, monitor, and manage the material risks to the FMI arising from tiered participation arrangements.		Consistent	
1. <i>An FMI should ensure that its rules, procedures, and agreements allow it to gather basic information about indirect participation in order to identify, monitor, and manage any material risks to the FMI arising from such tiered participation arrangements.</i>	EMIR Art 4(3) and 37(3) RTS on Indirect Clearing Art. 2 to 5		
2. <i>An FMI should identify material dependencies between direct and indirect participants that might affect the FMI.</i>	RTS on CCP Requirements Art 4(2), (3), 17(3) and 32(5)		
3. <i>An FMI should identify indirect participants responsible for a significant proportion of transactions processed by the FMI and indirect participants whose transaction volumes or values are large relative to the capacity of the direct participants through which they access the FMI in order to manage the risks arising from these transactions.</i>	RTS on Indirect Clearing Art 3(2)		
4. <i>An FMI should regularly review risks arising from tiered participation arrangements and should take mitigating action when appropriate.</i>	EMIR Art 37(3)		
Principle 20: FMI links			
An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks.		Consistent	
1. <i>Before entering into a link arrangement and on an ongoing basis once the link is established, an FMI should identify, monitor, and</i>	EMIR Art 52(1)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>manage all potential sources of risk arising from the link arrangement. Link arrangements should be designed such that each FMI is able to observe the other principles in this report.</i>	ESMA Guideline and Recommendation, 1 and 3 <i>Detailed Guidelines and Recommendations (a)(i)</i>		
2. <i>A link should have a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the FMIs involved in the link.</i>	EMIR Art 52(1) ESMA Guideline and Recommendation 1 <i>Detailed Guidelines and Recommendations (b)(i)–(v)</i>		
7. <i>Before entering into a link with another CCP, a CCP should identify and manage the potential spill-over effects from the default of the linked CCP. If a link has three or more CCPs, each CCP should identify, assess, and manage the risks of the collective link arrangement.</i>	EMIR Art 52(1) ESMA Guideline and Recommendation 3 and Detailed Guidelines and Recommendations (ii) and (vi) ESMA Guideline and Recommendation 4		
8. <i>Each CCP in a CCP link arrangement should be able to cover, at least on a daily basis, its current and potential future exposures to the linked CCP and its participants, if any, fully with a high degree of confidence without reducing the CCP's ability to fulfil its obligations to its own participants at any time.</i>	EMIR Art 40, Art 41(1) to 41(4), 52(1), 52(2) ESMA Guideline and Recommendation 4 RTS on CCP Requirements Art 24(1) to 24(4)		
Principle 21: Efficiency and effectiveness An FMI should be efficient and effective in meeting the		Partly consistent There are significant shortcomings between EMIR/RTS and KC3; specifically the absence of a	The EU is recommended to implement measures

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
requirements of its participants and the markets it serves.		requirement for a CCP to have established mechanisms to review its efficiency. In addition, there is a minor gap with KC2 in that the EMIR legal framework does not include a requirement that the CCP's objectives and strategies be "measurable and achievable."	that address the gaps or inconsistencies identified, particularly those related to KC2 and KC3.
1. <i>An FMI should be designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures.</i>	EMIR Art 7(1) to 7(5), 8(1) to 8(4), 26(3) and 36(1) ESMA Guideline and Recommendation on Interoperability Arrangements 2: Detailed Guidelines and Recommendations a) Documentation, subsections (i) and (ii) RTS on CCP Requirements Art 5(3), 9(2), 17(3) to 17(7)		
2. <i>An FMI should have clearly defined goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations, and business priorities.</i>	EMIR Art 17(5) RTS on CCP Requirements Art 3(4), 4(1), 4(3) to 4(5)	RTS article 7(2)(a) requires a CCP's board to set "clear objectives and strategies" for the CCP; however there is no requirement that such objectives and strategies be measurable and achievable.	
3. <i>An FMI should have established mechanisms for the regular review of its efficiency and effectiveness.</i>	EMIR Art 26(1) RTS on CCP Requirements Art 4(7) and 10(2)	While EMIR requires a CCP to assess the adequacy of its effectiveness, there is no specific requirement to establish mechanisms for the regular review of CCPs efficiency. The rating reflects the significance of this gap for the headline Principle.	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p>Principle 22: Communication procedures and standards An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.</p>		Consistent	
<p>1. <i>An FMI should use, or at a minimum accommodate, internationally accepted communication procedures and standards.</i></p>	<p>EMIR Art 38(4) RTS on CCP Requirements Art 9(2)</p>		
<p>Principle 23: Disclosure of rules, key procedures, and market data An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.</p>		<p>Partly consistent While EMIR and the RTS do set a number of disclosure requirements on CCPs, the gap in KC 5 (specifically, the absence of a requirement that a CCP complete regularly and disclose publically) responses to the CPSS-IOSCO Disclosure Framework for FMIs) is significant and impacts a CCP's obligation and observance with this principle.</p>	<p>The EU is recommended to implement measures that address the gaps or inconsistencies identified.</p>
<p>1. <i>An FMI should adopt clear and comprehensive rules and procedures that are fully disclosed to participants. Relevant rules and key procedures should also be publicly disclosed.</i></p>	<p>RTS on CCP Requirements Art 5(2) and 10(1) to 10(3)</p>		
<p>2. <i>An FMI should disclose clear descriptions of the system's design and operations, as well as the FMI's and participants' rights and obligations, so that participants can assess the risks they would incur by participating in the FMI.</i></p>	<p>EMIR Art 26(7) and 38(2) RTS on CCP Requirements Art 4(5), 10(1) and 10(3)</p>		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁸	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
3. <i>An FMI should provide all necessary and appropriate documentation and training to facilitate participants' understanding of the FMI's rules and procedures and the risks they face from participating in the FMI.</i>	EMIR Art 38(2) RTS on CCP Requirements Art 4(5), 10(1) and 58(3)		
4. <i>An FMI should publicly disclose its fees at the level of individual services it offers as well as its policies on any available discounts. The FMI should provide clear descriptions of priced services for comparability purposes.</i>	EMIR Art 38(1) RTS on CCP Requirements Art 10(1)		
5. <i>An FMI should complete regularly and disclose publicly responses to the CPSS-IOSCO Disclosure framework for financial market infrastructures. An FMI also should, at a minimum, disclose basic data on transaction volumes and values.</i>	EMIR Art 38(3)	Neither EMIR nor the RTS require CCPs to "complete regularly and disclose publicly responses to the CPSS-IOSCO Disclosure Framework." This gap is considered a significant gap.	

4.2.2 TRs

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p>Principle 1: Legal basis</p> <p>An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.</p>		<p>Partly consistent</p> <p>While EMIR requires that a TR shall establish adequate policies and procedures sufficient to ensure that its activities are conducted in compliance with all of the provisions of EMIR, this is a narrower concept than the requirement that the FMI have an enforceable legal basis for each material aspect of its activities. In particular, there are thus significant gaps in the context of KC 1-regarding the requirement of a legal basis that provides a high degree of certainty for each material aspect of a TR's activities (a standard that is broader than requiring a high degree of certainty of compliance with EMIR), KC 3-regarding the ability of a TR to articulate the legal basis for its activities in a clear and understandable manner, and KC 5- regarding the identification and mitigation of risks arising from potential conflicts of laws in different jurisdictions. In addition, there is a significant gap in the context of KC 4 which sets out a key element of the headline standard with regard to rules and procedures which allow a TR to provide a high degree of certainty that actions related to its contracts will not be voided, reversed, or</p>	<p>The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC1, KC3, KC4 and KC5.</p>

⁵⁹ Only the relevant principles for TRs (as set forth in the annex E of the PFMIIs) are included.

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
		subject to stays.	
1. <i>The legal basis should provide a high degree of certainty for each material aspect of an FMI's activities in all relevant jurisdictions.</i>	EMIR Art 78(1), 78(3) RTS and ITS on reporting RTS and ITS on TR Registration RTS on Access to Data Technical standards on TR registration	A significant gap is created by the absence of requirements in the referenced legislations that would provide legal certainty in each material aspect in all jurisdictions.	
2. <i>An FMI should have rules, procedures, and contracts that are clear, understandable, and consistent with relevant laws and regulations.</i>	EMIR Art 78(3) RTS on TR Registration Art 2, 4, 7, 8, and 20	A minor gap is created by the lack of referenced legislations to fully (and directly) address this KC. Some of the requirements embodied in this KC are only addressed in an indirect manner via the TR registration process.	
3. <i>An FMI should be able to articulate the legal basis for its activities to relevant authorities, participants, and, where relevant, participants' customers, in a clear and understandable way.</i>	EMIR Art 78(3) RTS on TR Registration Art 2, 4, 7, 8, and 20	A significant gap is created by the absence of explicit requirements in referenced legislation for the articulation of legal basis by the FMI.	
4. <i>An FMI should have rules, procedures, and contracts that are enforceable in all relevant jurisdictions. There should be a high degree of certainty that actions taken by the FMI under such rules and procedures will not be voided, reversed, or subject to stays.</i>	EMIR Art 75, 77 and 78(5)	A significant gap is created by the lack of current regulations to provide a high degree of certainty that contracts would be enforceable in all jurisdictions. Furthermore, referenced legislation does not place any obligation <i>on the TR</i> to ensure consistency with this KC.	
5. <i>An FMI conducting business in multiple jurisdictions should identify and mitigate the risks arising from any potential laws across jurisdictions.</i>	EMIR Art 75(3)	A significant gap is created by the lack of requirements in the referenced legislations that directly address the requirements of this KC. Furthermore, current legislation does not	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
		place any obligation <i>on the TR</i> to ensure consistency with this KC.	
Principle 2: Governance			
An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.			
1. <i>An FMI should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and other relevant public interest considerations.</i>	EMIR Art 78(4), 79 to 81 RTS on Access to Data Art 2(9)	A minor gap is created by the lack of clear requirements in the referenced legislations on obligation <i>for the TR</i> to have internal objectives that support financial stability and other relevant public interest considerations.	
2. <i>An FMI should have documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements should be disclosed to owners, relevant authorities, participants, and, at a more general level, the public.</i>	EMIR Art 78(1) RTS on TR Registration Art 5	A minor gap is created by the lack of requirements in the referenced legislations for the TR to disclose governance arrangements to relevant parties.	
3. <i>The roles and responsibilities of an FMI's board of directors (or equivalent) should be clearly specified, and there should be documented procedures for its functioning, including procedures to identify, address, and manage member conflicts of interest. The board should review both its overall performance and the performance of its individual board members regularly.</i>	EMIR Art 78(1) RTS Art 5, 8(b) RTS on TR Registration Art 6, 10, 13 and 15	A minor gap is created by the lack of explicit requirements in the referenced legislations that the <i>performance of the TR board</i> should be reviewed "regularly".	
4. <i>The board should contain suitable members with the appropriate skills and incentives to fulfil its multiple roles. This typically requires the inclusion of non-executive board member(s).</i>	EMIR Art 78(6) RTS Art 6(1) RTS on TR Registration	A gap is created by the lack of requirements in the referenced legislation for the inclusion of non-executive members on the TR board and	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
	Art 9	for the board to have incentives to fulfil its role. At the same time, the wording in the KC is somewhat more generic (by the use of “typically” as opposed to “should”). Weighing the various factors together, the gap noted above is considered to be minor.	
5. <i>The roles and responsibilities of management should be clearly specified. An FMI's management should have the appropriate experience, a mix of skills, and the integrity necessary to discharge their responsibilities for the operation and risk management of the FMI.</i>	EMIR Art 9, 78(1) and 78(6) RTS on TR Registration Art 5 and 8(b)		
6. <i>The board should establish a clear, documented risk-management framework that includes the FMI's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. Governance arrangements should ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board.</i>	EMIR Art 78(1), 78(4), 79(1), 79(2) RTS on TR Registration Art 7, 8 and 21(a), (c),(d)	A minor gap is created by the absence of clear requirements in the referenced legislations on the need for the TR board to put in place a risk-management framework that requires “ <i>decision making in crises and emergencies.</i> ”	
7. <i>The board should ensure that the FMI's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.</i>	EMIR Art 78(1), 78(7) and 78(8)	A significant gap is created by the lack of requirements in the referenced legislations that would compel the TR board to ensure the TR design, rules, overall strategy, and major decisions reflect appropriately the interest of the various stakeholders. Similarly, there is no explicit requirement that major decisions are required to be disclosed to relevant stakeholders.	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p>Principle 3: Framework for the comprehensive management of risks</p> <p>An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.</p>		<p>Partly consistent</p> <p>The EU TR framework does not include requirements for a TR to provide incentives to participants to help manage and contain the risks they pose to TRs (KC 2) to assess the effectiveness of a full range of options for recovery and orderly wind-down, or to prepare appropriate plans for recovery or orderly wind-down (KC 4). The RTS on TR Registration requirement that a TR verify the accuracy of reports does not imply a requirement that the TR provide incentives to participants. The fact that the RTS on TR Registration requires a TR to maintain liquid net assets funded by equity to cover general business losses in order to continue providing services as a going concern, or to ensure substitution once registration is withdrawn, is insufficient to fill the gap created by the lack of a requirement for ex ante planning.</p>	<p>The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC4.</p>
<p>1. <i>An FMI should have risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by the FMI. Risk-management frameworks should be subject to periodic review.</i></p>	<p>EMIR Art 55(4), 78(3), 79(1) and 81 RTS Art 7(3)(a), (b) RTS 150/2013 Art 21: RTS on TR Registration Art 7(3), 14 and 21</p>	<p>A minor gap is created by the absence of requirements in the referenced legislations that the risk-management frameworks should be subject to <u>periodic</u> review.</p>	
<p>2. <i>An FMI should provide incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the FMI.</i></p>	<p>EMIR Art 12 RTS on TR Registration Art 18(a) to (c), 19(b)</p>	<p>A minor gap is identified where the EU TR regulatory framework does not appear to require that a TR provide incentives as set forth</p>	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
		in this key consideration.	
3. <i>An FMI should regularly review the material risks it bears from and poses to other entities (such as other FMIs, settlement banks, liquidity providers, and service providers) as a result of interdependencies and develop appropriate risk-management tools to address these risks.</i>	RTS 150/2013, Art 21: EMIR Art 78(5), (7)		
4. <i>An FMI should identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. An FMI should prepare appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Where applicable, an FMI should also provide relevant authorities with the information needed for purposes of resolution planning.</i>	EMIR Art 79 RTS on TR Registration Art 20	Currently there is no draft legislation on recovery and resolution. EU authorities have indicated that this legislation is forthcoming (in draft form) later on in 2014.	
Principle 15: General business risk An FMI should identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.		Partly consistent There are significant gaps with respect to the requirements for a viable plan for recovery or orderly wind-down (KC 3) and with respect to plans to raise additional equity should that become necessary (KC 5).	The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC1, KC3, and KC5.
1. <i>An FMI should have robust management and control systems to identify, monitor, and manage general business risks, including losses from poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses.</i>	EMIR Art 78(1) RTS 150/2013, Art 21 RTS on TR Registration Art 21(a), (b)	A minor gap is created by the lack of requirements in the referenced legislations that the TR board “have robust management and control systems to identify, monitor, and manage general business risks”.	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
2. <i>An FMI should hold liquid net assets funded by equity (such as common stock, disclosed reserves, or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity an FMI should hold should be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.</i>	RTS on TR Registration Art 21		
3. <i>An FMI should maintain a viable recovery or orderly wind-down plan and should hold sufficient liquid net assets funded by equity to implement this plan. At a minimum, an FMI should hold liquid net assets funded by equity equal to at least six months of current operating expenses. These assets are in addition to resources held to cover participant defaults or other risks covered under the financial resources principles. However, equity held under international risk-based capital standards can be included where relevant and appropriate to avoid duplicate capital requirements.</i>	EMIR Art 79 RTS on TR authorisation Art 21	Current legislation does not place any requirement on the TR to ex ante have a viable recovery or orderly wind-down plan. This represents a significant gap. EU authorities have indicated that this legislation is forthcoming (in draft form) later on in 2014.)	
4. <i>Assets held to cover general business risk should be of high quality and sufficiently liquid in order to allow the FMI to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.</i>	RTS Art 21(b)	A minor gap is created by the absence of explicit mention in referenced legislations of the need to have high-quality assets. The assessment team considers that assets having a short maturity do not automatically imply they are of high-quality in all circumstances (as asserted by EU authorities).	
5. <i>An FMI should maintain a viable plan for raising additional equity should its equity fall close to or below the amount needed. This plan should be approved by the board of directors and updated regularly.</i>	EMIR Art 55(4) RTS Art 12(1), 12(2), 21(b) RTS on TR Registration Art 21	A significant gap is created by the absence of requirements in the referenced legislations for the TR to have ex ante a plan for raising additional equity if required and for that plan to be reviewed regularly.	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<p>Principle 17: Operational risk</p> <p>An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.</p>		<p>Broadly consistent</p> <p>There are gaps identified for KC2 (no requirement that systems, operational policies, procedures, and controls should be reviewed, audited, and tested periodically and after significant changes), KC6 (maximum recovery time objective of next business day instead of two hours) and KC7 (absence of requirement to consider risks posed to other FMIs) are considered (in context) to pose a minor impact on consistency with respect to this principle.</p>	<p>The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC2, KC6, and KC7.</p>
<p>1. <i>An FMI should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks.</i></p>	EMIR Art 79		
<p>2. <i>An FMI's board of directors should clearly define the roles and responsibilities for addressing operational risk and should endorse the FMI's operational risk-management framework. Systems, operational policies, procedures, and controls should be reviewed, audited, and tested periodically and after significant changes.</i></p>	EMIR Art 21 (a), 78 and 79 RTS Art 2(3)(a), (b), 7(2)(b) and 7(3)(a) RTS 150/2013, Art 21: RTS on TR Registration Art 21	A significant gap is created by the lack of clear requirements in the referenced legislations that address the second part of the KC (relating to periodic test of systems, operation, etc.)	
<p>3. <i>An FMI should have clearly defined operational reliability objectives and should have policies in place that are designed to achieve those objectives.</i></p>	RTS on TR Registration Art 21		
<p>4. <i>An FMI should ensure that it has scalable capacity adequate to handle increasing stress volumes and to achieve its service-level objectives.</i></p>	EMIR Art 79(1) RTS on TR Registration Art 21		
<p>5. <i>An FMI should have comprehensive physical and information security policies that address all potential vulnerabilities and threats.</i></p>	EMIR Art 80(1)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
6. <i>An FMI should have a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan should incorporate the use of a secondary site and should be designed to ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events. The plan should be designed to enable the FMI to complete settlement by the end of the day of the disruption, even in case of extreme circumstances. The FMI should regularly test these arrangements.</i>	EMIR Art 79(2) RTS on TR Registration Art 21 RTS 150/2013, Art 21	A significant gap is created by the absence of requirements in the referenced legislations for the TR to ensure that the critical systems will need to be resumed within two hours following the disruption.	
7. <i>An FMI should identify, monitor, and manage the risks that key participants, other FMIs, and service and utility providers might pose to its operations. In addition, an FMI should identify, monitor, and manage the risks its operations might pose to other FMIs.</i>	RTS on TR Registration Art 21(a) RTS 150/2013, Art 21	There are no requirements in the referenced legislations for the TR to identify and monitor the risks that the TR may pose to other FMIs. This is considered a minor gap.	
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Principle 18: Access and participation requirements An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.		Consistent	
1. <i>An FMI should allow for fair and open access to its services, including by direct and, where relevant, indirect participants and other FMIs, based on reasonable risk-related participation requirements.</i>	EMIR Art 78(7) RTS on TR Registration Art 18		
2. <i>An FMI's participation requirements should be justified in terms of the safety and efficiency of the FMI and the markets it serves, be tailored to and commensurate with the FMI's specific risks, and be publicly disclosed. Subject to maintaining acceptable risk control standards, an FMI should endeavour to set requirements that have</i>	EMIR Art 78(7) RTS on TR Registration Art 18		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>the least-restrictive impact on access that circumstances permit.</i>			
3. <i>An FMI should monitor compliance with its participation requirements on an ongoing basis and have clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a participant that breaches, or no longer meets, the participation requirements.</i>	EMIR Art 78(7) RTS on TR Registration Art 19		
<hr/>			
Principle 19: Tiered participation arrangements An FMI should identify, monitor, and manage the material risks to the FMI arising from tiered participation arrangements.		Broadly consistent There is a major gap in the context of KC 2 regarding the requirement that a TR identify material dependencies between direct and indirect participants that might affect the TR. However, in the context of the Principle as a whole, this gap has only a minor effect on consistency. The overall risk management framework used by ESMA (as alluded to in RTS Art 21) is viewed as helping address a part of this principle. However, gaps are still considered to exist, in particular with respect to KC2.	The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC1 and KC2.
1. <i>An FMI should ensure that its rules, procedures, and agreements allow it to gather basic information about indirect participation in order to identify, monitor, and manage any material risks to the FMI arising from such tiered participation arrangements.</i>	EMIR Art 9(1), 9(4), 78 and 79 RTS 148/2013 Art 1(5) RTS 150/2013 Art 7, 19 (a), (b), (d) and 21	While there are no specific requirements in EMIR or RTS that address this KC, the overall risk management specified in Art 21 (a) is viewed as covering some/most parts.	
2. <i>An FMI should identify material dependencies between direct and indirect participants that might affect the FMI.</i>	Table 1 to the annexes to	There are no specific articles in EMIR or RTS that address the requirements of this KC.	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
3. <i>An FMI should identify indirect participants responsible for a significant proportion of transactions processed by the FMI and indirect participants whose transaction volumes or values are large relative to the capacity of the direct participants through which they access the FMI in order to manage the risks arising from these transactions.</i>	the RTS and ITS on Reporting.		
4. <i>An FMI should regularly review risks arising from tiered participation arrangements and should take mitigating action when appropriate.</i>			
Principle 20: FMI links An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks.	EMIR Art 78 and 79 RTS 150/2013 Art 7, 19 and 21	Broadly consistent The assessment team considers that the exchange of files between TRs can be viewed as a link given the failure of the link could affect the major feature of a TR (e.g. availability of timely completed and accurate data of reporting entities). The gaps identified for KC2 (absence of requirement to have a well-founded legal basis) is considered, in the context of the Principle as a whole, to pose a minor impact on consistency with respect to this principle.	The EU is recommended to implement measures that address the gaps or inconsistencies identified.
1. <i>Before entering into a link arrangement and on an ongoing basis once the link is established, an FMI should identify, monitor, and manage all potential sources of risk arising from the link arrangement. Link arrangements should be designed such that each FMI is able to observe the other principles in this report.</i>	RTS 150/2013 Art 21	RTS Art 21 is viewed as addressing a large part of this KC. However, it is not clear how and where the second part of this KC (" <i>Link arrangements should be designed such that...</i> ") is addressed.	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
2. <i>A link should have a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the FMIs involved in the link.</i>	RTS 150/2013 Art 21	There are no articles in EMIR or RTS that seem to address the requirements of this KC.	
3. <i>A TR should carefully assess the additional operational risks related to its links to ensure the scalability and reliability of IT and related resources.</i>	EMIR Art 78 and 79 RTS 150/2013 Art 7, 19 and 21	It is not clear whether (and how) the overall risk management framework used by ESMA would cover this KC. This is viewed as a significant gap.	
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Principle 21: Efficiency and effectiveness An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.		Partly Consistent The rating for this principle reflects the gaps with respect to a lack of requirement for the regular review of efficiency (KC 3) and a requirement for clearly defined goals and objectives that is limited to business continuity and is thus overly narrow.	The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC2 and KC3.
1. <i>An FMI should be designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures.</i>	RTS on TR Registration Art 18, 22 and 23		
2. <i>An FMI should have clearly defined goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations, and business priorities.</i>	EMIR Art 78(4) RTS 150/2013, Art 21	A minor gap is created by the lack of requirements in the referenced legislations for the TR to have clearly defined goals and objectives that are <i>measurable and achievable</i> .	
3. <i>An FMI should have established mechanisms for the regular review of its efficiency and effectiveness.</i>	EMIR Art 55(4) RTS 150/2013, Art 8	A significant gap is created by the absence of requirements in the referenced legislations for	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs) ⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
	RTS on TR Registration Art 16 and 21	the TR to have established mechanisms for <i>regular</i> reviews.	
<p>Principle 22: Communication procedures and standards</p> <p>An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.</p>		Consistent	
<p>1. <i>An FMI should use, or at a minimum accommodate, internationally accepted communication procedures and standards.</i></p>	EMIR recital 98EMIR Art 81(5)		
<p>Principle 23: Disclosure of rules, key procedures, and market data</p> <p>An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.</p>		Partly consistent	The EU is recommended to implement measures that address the gaps or inconsistencies identified, particularly those related to KC1, KC3, and KC5.
<p>1. <i>An FMI should adopt clear and comprehensive rules and procedures that are fully disclosed to participants. Relevant rules</i></p>	EMIR Art 78(7) RTS Art 18 and 20(c)	A significant gap is created by the absence of requirements in the referenced legislations on	

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>and key procedures should also be publicly disclosed.</i>		the disclosure of rules and procedures by the TR.	
2. <i>An FMI should disclose clear descriptions of the system's design and operations, as well as the FMI's and participants' rights and obligations, so that participants can assess the risks they would incur by participating in the FMI.</i>	EMIR Art 78(7)	A minor gap is created by the absence of requirements in the referenced legislations requiring disclosure of system's design and operation (which is relevant information for participants to assess the risk that might incur by participating in a TR).	
3. <i>An FMI should provide all necessary and appropriate documentation and training to facilitate participants' understanding of the FMI's rules and procedures and the risks they face from participating in the FMI.</i>	EMIR Art 78(7), (8) RTS Art 23(c)	A significant gap is created by the absence of requirements in the referenced legislations on the disclosure of relevant documents to participants.	
4. <i>An FMI should publicly disclose its fees at the level of individual services it offers as well as its policies on any available discounts. The FMI should provide clear descriptions of priced services for comparability purposes.</i>	EMIR Art 78(8)		
5. <i>An FMI should complete regularly and disclose publicly responses to the CPSS-IOSCO Disclosure framework for financial market infrastructures. An FMI also should, at a minimum, disclose basic data on transaction volumes and values.</i>	RTS on Access to Data Art 1	There is currently no draft legislation on this KC.	
<hr/>			
Principle 24: Disclosure of market data by trade repositories A TR should provide timely and accurate data to relevant authorities and the public in line with their respective needs.		Consisten	
1. <i>A TR should provide data in line with regulatory and industry expectations to relevant authorities and the public, respectively, that is comprehensive and at a level of detail sufficient to enhance</i>	RTS on Access to Data Art 2 and 81(1)		

Implementation of the principles			
1. Text of applicable Principles and Key Considerations (KCs)⁵⁹	2. Implementation measures of the jurisdiction	3. Key conclusions for principle	4. Recommendations and comments
<i>market transparency and support other public policy objectives.</i>			
2. <i>A TR should have effective processes and procedures to provide data to relevant authorities in a timely and appropriate manner to enable them to meet their respective regulatory mandates and legal responsibilities.</i>	EMIR Art 81		
3. <i>A TR should have robust information systems that provide accurate current and historical data. Data should be provided in a timely manner and in a format that permits it to be easily analysed.</i>	EMIR Art 9, 80(3) and 81(2)		

Annex A: List of abbreviations

AM	Assessment Methodology
AT	Assessment Team
CCP	Central counterparty
CSD	Central securities depository
CSDR	CSD Regulation
CPMI	Committee on Payments and Market Infrastructures
CPSS	Committee on Payment and Settlement Systems
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EP	European Parliament
EMIR	European Market Infrastructure Regulation
ESMA	European Securities and Markets Authority
EU	European Union
FMI	Financial Market Infrastructure
IMTF	Implementation Monitoring Task Force
IOSCO	International Organization of Securities Commissions
ITS	Implementing technical standards
L1	Level 1
L2	Level 2
L3	Level 3
NCA	National competent authority
NCB	National central bank
OTC	Over-the-counter
PFMIs	Principles for Financial Market Infrastructures
RTS	Regulatory technical standards
SFD	Settlement Finality Directive
TR	Trade repository

Annex B: Reference documents

CPSS-IOSCO, *Principles for financial market infrastructures*, April 2012

<http://www.bis.org/publ/cpss101a.pdf>

CPSS-IOSCO, *Principles for financial market infrastructures: disclosure framework and assessment methodology*, December 2012

<http://www.bis.org/publ/cpss106.pdf>

CPSS-IOSCO, *Implementation monitoring of PFMI: First update to Level 1 assessment report*, May 2014

<http://www.bis.org/publ/cpss117.pdf>

CPSS-IOSCO, *Implementation monitoring of PFMI – Level 1 assessment report*, August 2013

<http://www.bis.org/publ/cpss111.pdf>

EC, COMMISSION DELEGATED REGULATION (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0001:0010:EN:PDF>

EC, COMMISSION DELEGATED REGULATION (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0011:0024:EN:PDF>

EC, COMMISSION DELEGATED REGULATION (EU) No 150/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0025:0032:EN:PDF>

EC, COMMISSION DELEGATED REGULATION (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0033:0036:EN:PDF>

EC, COMMISSION DELEGATED REGULATION (EU) No 152/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on capital requirements for central counterparties, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0037:0040:EN:PDF>

EC, COMMISSION DELEGATED REGULATION (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0041:0074:EN:PDF>

EC, COMMISSION DELEGATED REGULATION (EU) No 667/2014 of 13 March 2014 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on trade repositories by the European Securities and Markets Authority including rules on the right of defence and temporal provisions, March 2014

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.179.01.0031.01.ENG

EC, COMMISSION DELEGATED REGULATION (EU) No 876/2013 of 28 May 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties, May 2013

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:244:0019:0022:EN:PDF>

EC, COMMISSION DELEGATED REGULATION (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories, July 2013

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:279:0004:0009:EN:PDF>

EC, COMMISSION IMPLEMENTING REGULATION (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:352:0020:0029:EN:PDF>

EC, COMMISSION IMPLEMENTING REGULATION (EU) No 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:352:0030:0031:EN:PDF>

EC, COMMISSION IMPLEMENTING REGULATION (EU) No 1249/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of the records to be maintained by central counterparties according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, December 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:352:0032:0039:EN:PDF>

EC, DIRECTIVE 98/26/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 May 1998 on settlement finality in payment and securities settlement systems, May 1998

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998L0026>

EC, EMIR: Frequently Asked Questions, December 2013

http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf

EC, 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, July 2012

http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=MhbGT7rWGn7T3TBMQpCDh765GBLTT62bjf5LNFJbTMF0B1jpKDH5!-1644551844?uri=CELEX:32012R0648

ECB, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, October 2012

https://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026en.pdf

ECB, PROTOCOL (No 4) ON THE STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND OF THE EUROPEAN CENTRAL BANK, October 2012

https://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026en_protocol_4.pdf

ESMA, Questions and Answers Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR), June 2014

<http://www.esma.europa.eu/system/files/2014-682.pdf>

ESMA, Questions and Answers Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR), May 2014

<http://www.esma.europa.eu/system/files/2014-550.pdf>

ESMA, *Questions and Answers Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)*, March 2014

http://www.esma.europa.eu/system/files/2014-297_qa_vii_on_emir_implementation_20_march_14_0.pdf

ESMA, *Guidelines and Recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements*, March 2013

<http://www.esma.europa.eu/content/Guidelines-and-Recommendations-establishing-consistent-efficient-and-effective-assessments-i>

ESMA, *Guidelines and Recommendations regarding written agreements between members of CCP colleges*, June 2013

<http://www.esma.europa.eu/content/Guidelines-and-Recommendations-regarding-written-agreements-between-members-CCP-colleges>

ESMA, *Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties*, September 2014

<http://www.esma.europa.eu/content/Guidelines-and-Recommendations-regarding-implementation-CPSS-IOSCO-Principles-Financial-Mark>

EC, *REGULATION (EU) No 909/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories*, July 2014

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.257.01.0001.01.ENG

EU, *The European Union explained – How the European Union works*, 2013

<http://bookshop.europa.eu/en/how-the-european-union-works-pbNA0113090/>

Annex C: Detailed response from the EU authorities

The PFMIIs are high-level principles which are outcome-based whereas the regulatory framework for CCPs and TRs in the European Union follows a rules-based approach for implementing the PFMIIs.

The AT has identified some areas in which it believes that additional or more detailed requirements should be adopted in order for the PFMIIs to be completely and consistently implemented. Most of these are differences in the way in which the requirements of the EMIR framework are articulated as compared with that of the PFMIIs, i.e. circumstances where EMIR and the regulatory and implementing technical standards made under it establish requirements which are consistent with the PFMIIs but which do not employ the same operative language as used in the PFMIIs.

While the assessment methodology may have constrained the AT's possibility to take an outcomes-based approach in establishing whether EMIR and its regulatory and implementing technical standards are consistent with the PFMIIs, the European authorities note this is the intention and do consider that the regulatory framework for CCPs and TRs under EMIR does in practice achieve the objectives of the PFMIIs.

This point needs to be spelled out clearly in informing authorities, market actors and the general public about any gaps and inconsistencies in a jurisdiction's regulatory framework that may potentially be a threat for financial stability.

The EU authorities have the following specific comments:

1. Ex ante planning

The PFMIIs require ex ante planning in order to ensure the ability of the FMI to operate in circumstances in which it may have difficulty meeting regulatory and other requirements, for example during a default or other stress event. The AT has observed that the EU framework does not explicitly require CCPs and TRs to have plans to address such adverse circumstances. However, as noted by the AT, EMIR and the regulatory and implementing standards under it do require CCPs and TRs to meet robust ex ante resource requirements and to meet those requirements on a continuous basis. By way of example, CCPs are required to establish a minimum amount below which the size of their default fund is not to fall under any circumstances and CCPs and TRs are required to at all times hold capital greater than a prescribed amounts. In order for a CCP or TR to meet their ex ante resource requirements on a continuous basis, it is indeed necessary for them to ex ante ascertain how they plan to address any circumstances in which they may have difficulty meeting regulatory and other requirements. This is reinforced by requirements on CCPs and TRs to maintain adequate policies and procedures designed to detect any risk of failure to comply with their obligations.

2. Risk management for TRs

The AT considered that some of the provisions in EMIR and the accompanying technical standards applicable to TRs are broadly worded and not sufficient to cover all risks described in some of the Principles. However, to meet the objectives of the PFMIIs in as a comprehensive manner as possible the EU regulatory framework for TRs takes a holistic approach to risk management. In particular, the risk management requirements for TRs cover all risks, and require TRs to have procedures designed to identify and mitigate any material risk to which the TR is exposed.

3. Registration requirements versus explicit requirements for ongoing compliance

The AT has noted that it had challenges evaluating the completeness of the EU framework regarding TRs because the primary detail concerning the European Union's requirements for TRs was found in the regulatory technical standards specifying the details of the application for registration as a trade

repository. The EU authorities highlight that EMIR clearly provides that a registered TR shall (i) “comply at all times with the conditions for registration” and (ii) “notify ESMA of any material changes to the conditions for registration”. The requirements concerning an application for registration do therefore have ongoing effect and are a core part of the EU regulatory framework regarding TRs.

Annex D: List of recognised CCPs and TRs in the EU

The CCPs listed below have been authorised as of 3 November 2014 to offer services and activities in the EU in accordance with Regulation (EU) No 648/2012 of the EP and of the Council of 4 July 2012 on OTC derivatives, CCPs and TRs (EMIR).⁶⁰

- Nasdaq OMX Clearing AB – Sweden – Finansinspektionen
- European Central Counterparty N.V. – Netherlands – The Netherlands Bank (De Nederlandsche Bank, DNB)
- KDPW_CCP – Poland – Komisja Nadzoru Finansowego (KNF)
- Eurex Clearing AG – Germany – Bundesanstalt für Finanzdienstleistungs aufsicht (Bafin)
- Cassa di Compensazione e Garanzia S.p.A. (CCG) – Italy – Bank of Italy
- LCH.Clearnet SA – France – Autorité de Contrôle Prudentiel et de Résolution (ACPR)
- European Commodity Clearing – Germany – Bundesanstalt für Finanzdienstleistungs aufsicht (Bafin)
- LCH.Clearnet Ltd – United Kingdom – Bank of England
- Keler CCP – Hungary – Central Bank of Hungary (MNB)
- CME Clearing Europe Limited – United Kingdom – Bank of England
- CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A) – Austria – Austrian Financial Market Authority (FMA)
- LME Clear Limited – United Kingdom – Bank of England
- BME Clearing – Spain – Comisión Nacional del Mercado de Valores (CNMV)
- OMIClear – C.C., S.A. – Portugal – Comissão do Mercado de Valores Mobiliários (CMVM)

A further six CCPs have made applications to be authorised to offer services and activities in the EU in accordance with EMIR. These applications are currently under review by the respective national competent authorities and colleges.

The TRs listed below have been registered by ESMA in accordance with Regulation (EU) No 648/2012 of the EP and of the Council of 4 July 2012 on OTC derivatives, CCPs and TRs (EMIR).⁶¹

- DTCC Derivatives Repository Ltd. (DDRL)
- Krajowy Depozyt Papierów Wartościowych S.A. (KDPW)
- Regis-TR S.A.
- UnaVista Limited
- CME Trade Repository Ltd. (CME TR)
- ICE Trade Vault Europe Ltd. (ICE TVEL)

⁶⁰ http://www.esma.europa.eu/system/files/ccps_authorised_under_emir.pdf (Reference date: 15 July 2014).

⁶¹ See: <http://www.esma.europa.eu/page/Registered-Trade-Repositories> (Reference date: 15 July 2014).