



BANK OF ENGLAND

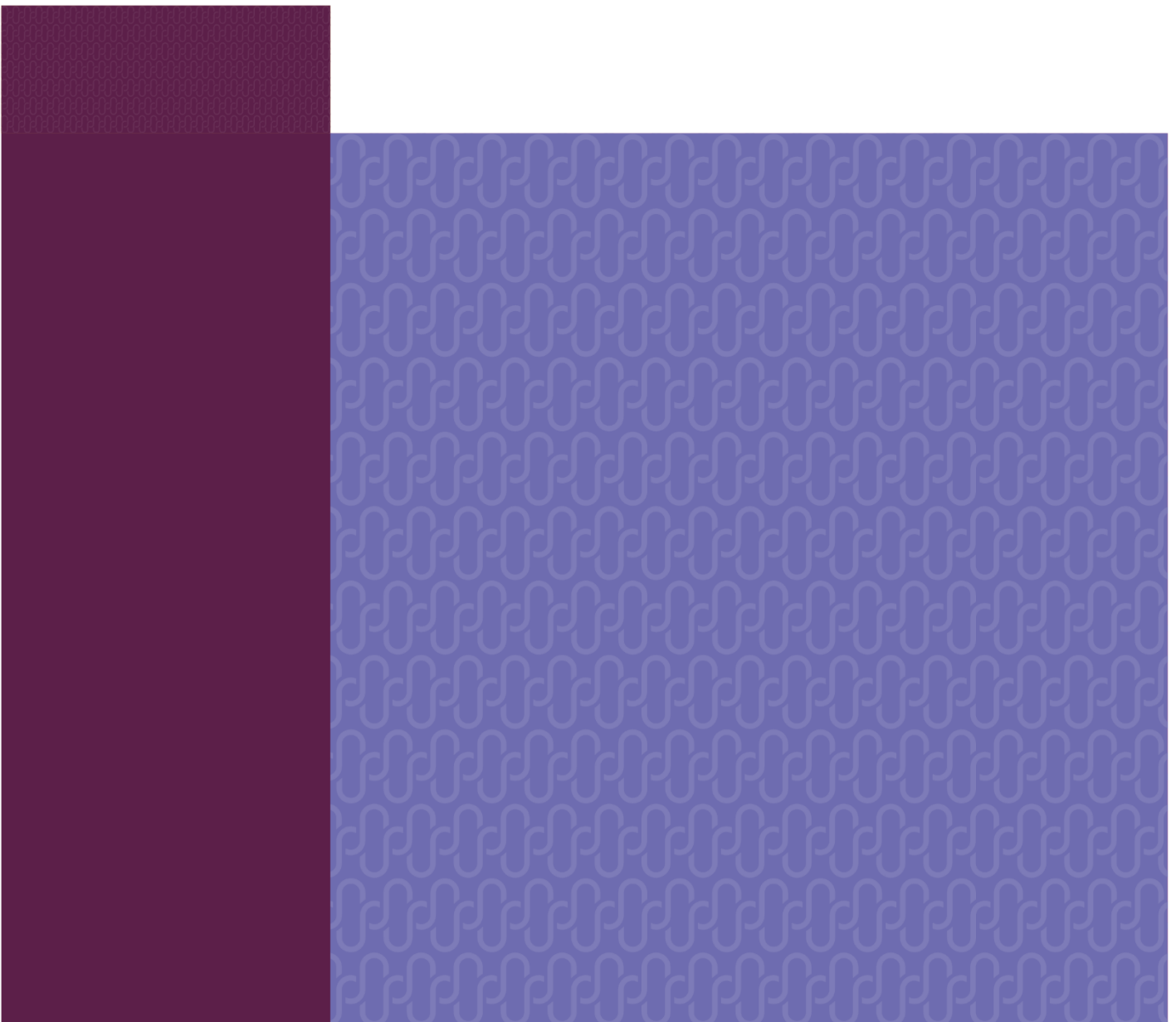
Financial Market
Infrastructure



Statement of Policy

The Bank of England's approach to comparable compliance under EMIR Article 25a

June 2022





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1 Introduction

1.1 This Statement of Policy (SoP) sets out the Bank of England's ('the Bank') approach to granting comparable compliance to incoming central counterparties (CCPs) recognised to provide clearing services to clearing members or trading venues established in the UK.

1.2 Under the on-shored European Market Infrastructure Regulation (EMIR),¹ the Bank is required to 'tier' incoming CCPs based on the degree to which the CCP poses, or is likely to pose, risks to UK financial stability. An incoming CCP that is designated Tier 2 (where that CCP is systemically important or likely to become systemically important for the financial stability of the UK) will be subject to direct UK supervision and regulation. An incoming CCP that is designated Tier 1 will be primarily supervised and regulated by its home authority.

1.3 This SoP is relevant to recognised incoming CCPs that have been designated Tier 2 by the Bank in accordance with EMIR Article 25(2a) and the Bank's policy on tiering incoming CCPs. This SoP is also relevant to Tier 2 CCPs' home authorities. It should be read alongside the [Bank's approach to tiering incoming central counterparties under EMIR Article 25](#).

1.4 Under EMIR Article 25a(1), a Tier 2 CCP ('requesting CCP') may submit a reasoned request that the Bank assesses whether in its compliance with the applicable home regime and taking into account the provisions of the regulations made under EMIR Article 25(6), the CCP may be deemed to satisfy compliance with the following EMIR requirements:

- Article 16 (Capital Requirements);
- Title IV (Requirements for CCPs, including organisational, conduct of business and prudential requirements); and
- Title V (Interoperability Arrangements).

1.5 The purpose of this SoP is to set out the Bank's approach to assessing such a request.

1.6 The Bank will grant comparable compliance to a requesting CCP for specific areas where the Bank considers comparable supervisory outcomes are achieved through the home regime. Where comparable compliance has been granted, the Bank will defer to the home authority for these specific areas and would not expect to engage in independent direct regulation or supervision of those specific areas.

Implementation

1.7 The Bank will implement its approach to comparable compliance from Thursday 1 December 2022.

¹ Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of retained EU law, and in particular as amended by the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020. Unless otherwise stated, any references to EU or EU-derived legislation refer to the version of the legislation which forms part of retained EU law.

2 The Bank's approach to comparable compliance

2.1 This section sets out the Bank's approach to assessing reasoned requests from CCPs to grant comparable compliance.

2.2 The Bank will follow three principles for the assessment of such requests:

Principle 1: The Bank expects to grant comparable compliance for the specific areas where the Bank considers comparable supervisory outcomes are achieved through the home regime.

2.3 The Bank will assess comparable compliance, if requested, against individual requirements for an incoming CCP that has been designated as Tier 2. This assessment will be done at the level of the individual CCP. For areas where the Bank considers comparable supervisory outcomes are achieved through the home regime, the Bank will defer to the home authority by granting comparable compliance for those specific areas.

Principle 2: The Bank will assess the requirements applied to the requesting CCP and how these requirements are applied under the supervisory approach of its home regime to determine whether comparable supervisory outcomes are achieved.

2.4 In order to determine whether comparable supervisory outcomes are achieved, the Bank will assess how the home authority applies and supervises against the home requirements, as well as assessing the requirements themselves.

2.5 The Bank will also assess whether there is sufficient supervisory co-operation and engagement in order to have enough visibility over the home authority's supervisory approach and assurance that comparable supervisory outcomes are being achieved on an ongoing basis.

Principle 3: The Bank will assess how the home regime requirements in aggregate may deliver comparable outcomes to those in Article 16, Title IV and Title V of EMIR.

2.6 In order to determine whether compliance with an applicable home regime may be deemed to satisfy the requirements set out in Article 16, Title IV and Title V of EMIR on an outcomes basis, the Bank will focus on supervisory outcomes, rather than any specific element in isolation. This means the assessment will take into consideration all relevant elements, and determine whether, in the Bank's judgement, comparable outcomes are achieved.

Three-step process to assessing comparable compliance

2.7 With the three principles in mind, the Bank will follow a three-step process to assess whether a requesting CCP should be granted comparable compliance.

Step 1: Information gathering

2.8 In its reasoned request for comparable compliance, the requesting CCP must provide relevant information detailing how compliance with the applicable home regime's framework satisfies compliance with the relevant requirements set out in EMIR Article 16, Title IV and Title V. The requesting CCP should provide sufficient information detailing the requirements of the home regime such that the Bank can assess whether comparable supervisory outcomes are achieved through the home regime. A requesting CCP may also submit supplementary information detailing its relevant internal rules and policy (such as a governance structure diagram, organisation charts, or risk governance framework) to aid the Bank in its assessment.

2.9 The Bank may request additional information either from the requesting CCP or the home authority of the requesting CCP. This may include legal opinions, opinions of the home authority, letters of good standing, the supervisory framework and supervisory approach of the home authority, and how requirements are applied under the home regime.

2.10 With regard to EMIR Title IV (Requirements for CCPs), the Bank will use the information already submitted to the Bank by the home authority of the requesting CCP as part of the Bank's provision of equivalence advice to HM Treasury in relation to the relevant jurisdiction, to the extent appropriate.

2.11 In addition, the Bank may also take into account information gathered as part of the informed reliance assessment conducted according to its tiering approach.

Step 2: Qualitative analysis

2.12 The Bank will conduct a qualitative analysis of the reasoned request and accompanying materials submitted by the requesting CCP to assess whether comparable supervisory outcomes are achieved, such that the requesting CCP may be deemed to satisfy compliance with requirements under the UK regime.

2.13 The Bank may also consider other publicly available materials published by relevant international bodies to supplement its qualitative analysis, such as the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) 'Level 2' reports on the implementation of the *Principles for financial market infrastructures* across the 28 jurisdictions of the Financial Stability Board (FSB), the CPMI or IOSCO and the Financial Sector Assessment Program (FSAP) of the International Monetary Fund (IMF).

Step 3: Decision

2.14 The Bank will make a decision on whether to grant comparable compliance based on the outcome of the previous steps. The Bank's decision will be made on the basis of an assessment of all applicable requirements and relevant information in aggregate.

2.15 In any area(s) where comparable outcomes are identified, the Bank will determine that the application of requirements from the home regime provides a comparable outcome to the requirements under the UK regime. Therefore, the Bank will, as long as this assessment remains valid, rely on compliance with the requirements of the home regime for compliance with the corresponding requirements under EMIR, and the requesting CCP will be deemed to comply with the relevant requirements under EMIR.

2.16 In any area(s) where comparable outcomes are not identified, the Bank will continue to directly supervise the requesting CCP. Upon reaching its decision the Bank will provide the requesting CCP with relevant information as to why comparable outcomes were not identified.

2.17 Comparable compliance decisions may be subject to review (and withdrawal) by the Bank, as set out below.

Exemption and exceptions

2.18 Where complying with a specific requirement set out in Article 16, Title IV or Title V of EMIR would result in a breach of one or more provision of the applicable home regime, the Bank will factor evidence that it is impossible for the requesting CCP to comply with that requirement without breaching a mandatory provision of the applicable home regime into its decision on whether to grant comparable compliance.

2.19 The Bank will consider granting comparable compliance regarding the requirements set out under Article 16, Title IV and Title V of EMIR where the requesting CCP has an exemption or applies an exemption under the applicable home regime that is comparable to any of the exemptions set out under EMIR Article 1 paragraphs 4 and 5. In this case, the requesting CCP should provide evidence that the UK and home exemption are comparable.

The Bank's supervisory approach where comparable compliance has been granted

2.20 In areas where the Bank has granted comparable compliance, compliance with the home regulatory framework, regulatory approvals granted by the home authority and the supervision and enforcement regime of the home authority would satisfy compliance with the relevant UK requirements.

2.21 The Bank will not expect to engage in independent supervisory activities and conduct independent validations under EMIR, independent general investigations or independent on-site visits in areas where comparable compliance has been granted.

2.22 This is without prejudice to the Bank's statutory duties including in its responsibility as supervisor of incoming CCPs to ensure their ongoing compliance with conditions for recognition.²

2.23 Where comparable compliance is granted, the Bank will monitor and assess the appropriateness of comparable compliance on an ongoing basis. The Bank will look to establish effective co-operation with the home authority in order to do this, including sharing of relevant information in a timely manner. If the Bank is not able to receive sufficient information and co-operation from the home authority to give assurance that comparable supervisory outcomes are achieved, the Bank will review the comparable compliance decisions for the relevant areas as set out below under 'Review and withdrawal of comparable compliance decisions'.

Review and withdrawal of comparable compliance decisions

2.24 A review of the decision on granting comparable compliance will be conducted by the Bank in the event of a change at or in relation to the requesting CCP, supervisory and regulatory framework of the home authority, or co-operation and information sharing with home authority. This includes changes in the requesting CCP's risk profile, supervisory outcomes achieved or achievable through comparable compliance, or in the status of its ongoing compliance with the conditions for recognition.

2.25 The Bank expects the requesting CCP and/or its home authority to notify the Bank of changes set out in paragraph 2.24 in a timely manner. The Bank may request updated information from the requesting CCP and/or its home authority to help assess whether there have been, or are likely to be, changes set out in paragraph 2.24.

2.26 If the Bank determines its comparable compliance decision is no longer appropriate and hence should be withdrawn, the Bank will endeavour to inform the requesting CCP and its home authority before making a decision to withdraw comparable compliance.

2.27 In withdrawing comparable compliance, the Bank will endeavour to provide an adaptation period, where feasible. This will be appropriate and proportionate to the reasons for the withdrawal of comparable compliance, to minimise potential market disruption and any adverse effects on the financial stability of the UK or other jurisdictions in which the requesting CCP may be operating.

² See EMIR Article 25b and the Bank's duties to supervise on an 'ongoing basis' the compliance of Tier 2 CCPs with the requirements set out in Article 16 and in Titles IV and V of EMIR.

Requests for a comparable compliance reassessment

2.28 The Bank will assess the merits of any subsequent request for a comparable compliance assessment on a case-by-case basis, and will consider if there are reasonable grounds to proceed with a reassessment (for instance, if there is evidence of changes to the requesting CCP's operations and/or home regulatory regime). Where the Bank is satisfied that there are reasonable grounds, it will proceed with a reassessment.