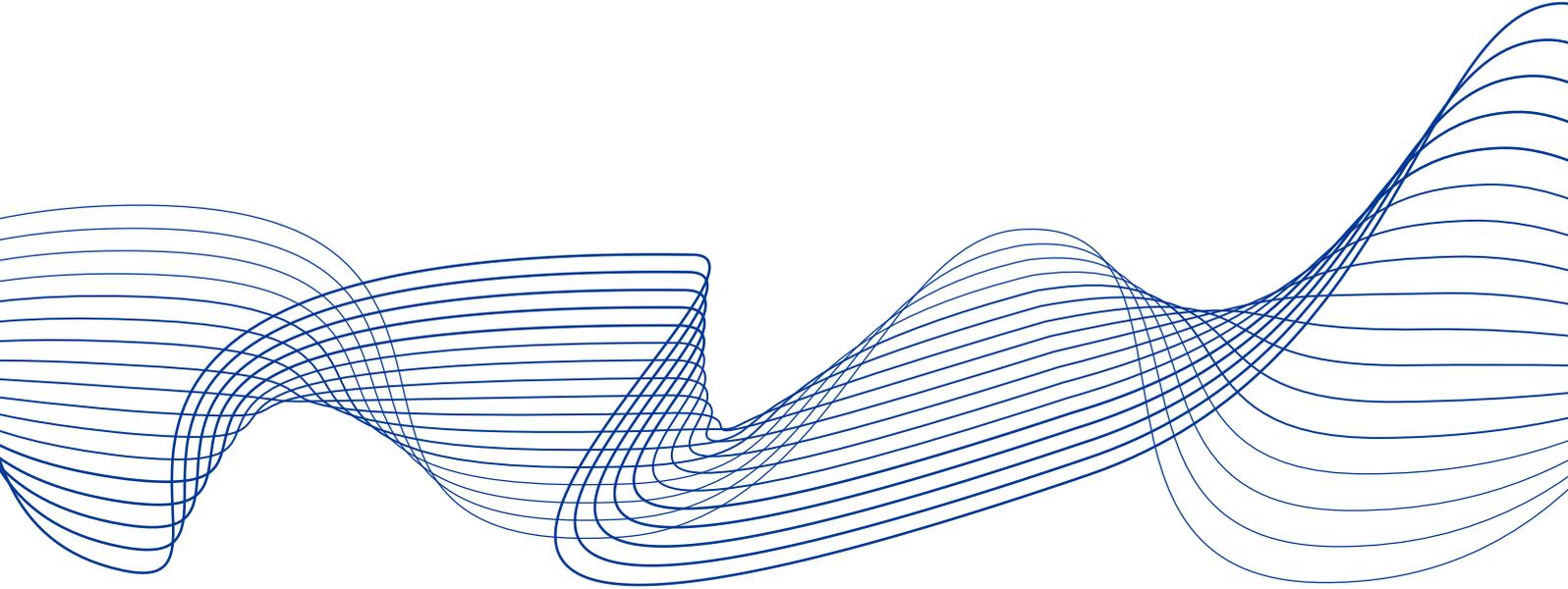


Summary compliance report

February 2023

Recommendation of the European
Systemic Risk Board of 25 May
2020 on liquidity risks arising from
margin calls (ESRB/2020/6) – Sub-
recommendations B(1) and D(1)



ESRB

European Systemic Risk Board

European System of Financial Supervision

Contents

Executive summary	2
1 Introduction	4
2 Policy objectives of the Recommendation	6
3 Assessment methodology	8
3.1 Assessment criteria and implementation standards, grading methodology and principle of proportionality	9
3.2 Issues encountered by the Assessment Team	11
4 Results of the assessment	14
4.1 Details of compliance of ESMA with Sub-recommendation B(1)	14
4.2 Details of addressees' compliance with Sub-recommendation D(1)	14
5 Conclusion	16
Annex I: Composition of the Assessment Team	18
Annex II: Compliance criteria and implementation standards	19
Imprint and acknowledgements	21



Executive summary

On 25 May 2020, the European Systemic Risk Board (ESRB) issued Recommendation ESRB/2020/6 aimed at addressing the liquidity risks potentially arising from margin calls (the “Recommendation”).¹ The Recommendation consists of its component Recommendations A, B, C and D. Each of these Recommendations contains sub-recommendations (the “sub-recommendations”), aimed at: (i) limiting cliff effects in relation to the demand for collateral, including in connection with client clearing services and non-centrally cleared markets; (ii) enhancing central counterparty (CCP) stress test scenarios for the assessment of future liquidity needs; (iii) limiting liquidity constraints related to margin collection; and (iv) promoting international standards related to the mitigation of procyclicality in client clearing services.

Although not legally binding, recommendations issued by the ESRB are subject to an “act or explain” mechanism in accordance with Article 17 of the ESRB Regulation.² The addressees are therefore under an obligation to inform the European Parliament, the Council of the European Union, the European Commission and the ESRB of the actions they have taken to comply with the recommendations, or to provide adequate justification for inaction.

Addressees were asked to provide the ESRB with an initial follow-up report by 30 November 2020. Addressees were asked to report on the measures taken in response to Sub-recommendations A, B(2), B(3), B(4) and C of the Recommendation, or justify any inaction. An Assessment Team was set up for the purpose of this initial follow-up report on the Recommendation, and a “Summary compliance report” on its main findings was also published.³

In addition, addressees were requested to provide the ESRB with a subsequent follow-up report by 31 December 2021 on Sub-recommendations B(1) and D(1) of the Recommendation, which was given a longer deadline for implementation than the other recommendations. For the purposes of the follow-up, the Recommendation included a standardised questionnaire, which was to be completed and submitted by the addressee of Sub-recommendation B(1), namely the European Securities and Market Authority (ESMA), and the addressees of Sub-recommendation D(1), namely relevant competent authorities as defined under Section 2(1)(1)(f) of the Recommendation.

This report reflects the implementation status as of 31 December 2021 and the information subsequently provided up to 17 October 2022. The assessment of addressees’ compliance was performed by an Assessment Team composed of some of those members of the previous assessment team who had been involved in the assessment of the initial follow-up reports. A

¹ Recommendation of the European Systemic Risk Board of 27 May 2020 on liquidity risks arising from margin calls (ESRB/2020/6) (OJ C 238, 20.7.2020, p. 1).

² Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

³ “Summary compliance report, Recommendation of the European Systemic Risk Board of 25 May 2020 on liquidity risks arising from margin calls (ESRB/2020/6) – Recommendations A, B(2), B(3), B(4) and C”, ESRB, November 2021.



further follow-up report regarding the implementation of Sub-recommendation D(2) is due to be provided by the European Commission by 31 December 2022.

According to the assessment, the degree of compliance with the recommendations assessed at this stage is significant and no major systemic concerns were raised by the addressees' responses.

In particular, with regard to Sub-recommendation B(1), the assessment exercise found that ESMA is largely compliant with this sub-recommendation, even though the Authority has expressed legal doubts about the scope of the relevant Level 1 provision (Article 44(1) of the European Market Infrastructure Regulation (EMIR)⁴) which, in its view, prevents it from modifying the regulatory technical standards (RTS) developed under EMIR in the way suggested by Sub-recommendation B(1). Following extensive discussions with the legal team of the ESRB Secretariat, the Assessment Team has arrived at a different and broader interpretation of the scope of application of Article 44(1) EMIR. Nevertheless, the Assessment Team respectfully notes that the forthcoming EMIR review could provide a valuable opportunity for the European legislators to address ESMA's legal concerns⁵.

In line with Sub-recommendation D(1), the assessment exercise found that most jurisdictions actively participated in international discussions on "means to mitigate the procyclicality in margin and haircut practices in the provision of client clearing services".

Finally, the Assessment Team respectfully notes that the current situation of market stress mainly generated by geopolitical events is similar to the situation during the pandemic. From this point of view, the Recommendation remains relevant.

⁴ 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 (OJ L 201, 27.7.2012, p. 1).

⁵ On 7 December 2022, the European Commission has published a Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets, COM(2022) 697 final, 2022/0403(COD). Its proposed amendments to Article 44(1) require CCPs to take into account the liquidity risk generated by the default of at least the two entities to which it has the largest exposures, including clearing members and liquidity service providers.



1 Introduction

This compliance report (the “Report”) provides an overview of the extent of the compliance with Sub-recommendations B(1) and D(1) of Recommendation ESRB/2020/6 on liquidity risks arising from margin calls (the “Recommendation”)⁶.

This assessment of compliance follows a first assessment undertaken in the course of 2021 on Sub-recommendations A, B(2), B(3), B(4) and C of the Recommendation, which resulted in a “Summary compliance report” being published in November 2021. The degree of compliance with the Recommendation was significant at the time, and no major systemic concerns were highlighted by the addressees’ responses. While the first and second assessment are different in scope, the content of the first compliance report remains relevant in terms of the overall comments on the Recommendation. A further follow-up report regarding the implementation of Sub-recommendation D(2) is due to be provided by the European Commission by 31 December 2022.

Recommendations issued by the ESRB are not legally binding, but are subject to an “act or explain” mechanism in accordance with Article 17 of the ESRB Regulation. This means that the addressees are under an obligation to inform the European Parliament, the Council of the European Union, the European Commission and the ESRB of the actions they have taken to comply with these recommendations or to provide justification for inaction.

In accordance with Section 2(3) of the Recommendation, addressees were asked to provide the ESRB with a follow-up report by 31 December 2021 on Sub-recommendations B(1) and D(1) of the Recommendation. For the purposes of the follow-up, the Recommendation included a standardised follow-up questionnaire, which was to be completed and submitted by the addressee of Sub-recommendation B(1), namely ESMA, and the addressees of Sub-recommendation D(1), namely relevant competent authorities as defined under Section 2(1)(1)(f) of the Recommendation. The assessment of addressees’ compliance or justification for inaction was based on their submissions to the ESRB Secretariat using this template, as well as further information provided by the addressees during the assessment process. For efficiency reasons, the Assessment Team also relied on the information provided by individual addressees during the assessment of the first part of the Recommendation. This report reflects the implementation status as of 31 December 2021 and the information subsequently provided up to 17 October 2022.

To perform the assessment, an Assessment Team was set up under the auspices of the Advisory Technical Committee in 2020 to carry out the initial follow-up to the Recommendation, which dealt with Sub-recommendations A, B(2), B(3), B(4) and C of the Recommendation. The same Assessment Team, paired down to four members given the narrow scope of this assessment, which was limited to Sub-recommendations B(1) and D(1), continued with the subsequent follow-up to the Recommendation, and was supported by the staff of the ESRB Secretariat (see Annex I for details of its composition).

⁶ Recommendation of the European Systemic Risk Board of 27 May 2020 on liquidity risks arising from margin calls (ESRB/2020/6) (OJ C 238, 20.7.2020, p. 1).



The assessment was conducted taking into account:

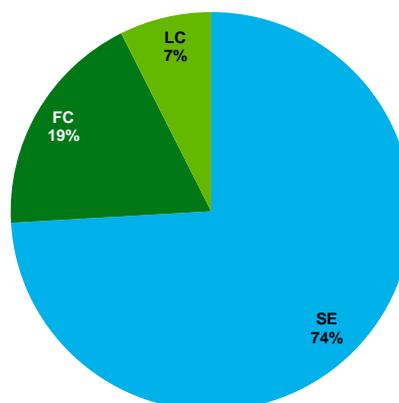
- the objectives of the Recommendation;
- the principles underpinning the “Handbook on the assessment of compliance with ESRB recommendations” (the “Handbook”);
- the implementation standards prepared by the Assessment Team, which specify the grade to be awarded for each key element on the basis of the objectives of the Recommendation (see Annex II for details of the implementation standards); and
- the principle of proportionality.

The overall assessment revealed a significant degree of compliance with the Recommendation among the addressees. Sub-recommendation B(1) was addressed only to ESMA in its capacity as an RTS-setting body.

As for Sub-recommendation D(1), the Assessment Team graded most addressees as “fully compliant” or “sufficiently explained”, as described in Section 4 of this report.

Chart 1

Addressees’ compliance with Sub-recommendation D(1)



Further details on the abbreviations and methodology used can be found in Section 3 of this report.

In addition to the figure shown above, ESMA, the addressee of Sub-recommendation B(1), was assessed as “**largely** compliant”.

In the sections that follow, this report sets out: (i) the objectives of the Recommendation; (ii) the methodology used by the Assessment Team; (iii) the compliance results for each addressee; and (iv) a summary of the level of implementation.



2 Policy objectives of the Recommendation

The outbreak of the coronavirus (COVID-19) pandemic and the concurrent sharp increase in commodities and energy price volatility have, among other things, led to significant margin calls across centrally cleared and non-centrally cleared markets. Initial margins (IMs) have increased since mid-February 2020 – more significantly for listed derivatives and cash products than for over-the-counter (OTC) derivatives – in the wake of higher transaction volumes, and as a margin model's response to potentially higher future losses due to heightened market price volatility. Furthermore, central counterparties (CCPs) have issued calls for and collected large amounts of intraday margins, including in response to market price movements (variation margin (VM) component), with the corresponding payout often occurring the following morning, causing liquidity to be temporarily held on the accounts of the CCPs. A significant rise in the payment and receipt of the daily VM on bilateral portfolios was recorded in March 2020.

Many clearing members have seen a particularly marked increase in IMs, and some clearing members may have experienced greater liquidity constraints. However, there have been no major defaults at any CCPs established in the European Union.⁷ Margin calls may have had a significant impact on non-bank entities, via client clearing or in non-centrally cleared transactions, due to liquidity constraints.

The ESRB acknowledged the liquidity savings for the whole financial system related to the multilateral netting benefit provided by central clearing. It also noted the systemic benefit of central clearing as a critical means of improving financial stability by ensuring and developing sound credit and liquidity risk management practices. In addition, the ESRB acknowledged that policy action on margins must not jeopardise protection against counterparty credit risk. Counterparties, including CCP clearing members and their clients, should ensure that they hold sufficient liquidity to cover margin calls in a timely fashion. However, it is also beneficial, from a financial stability perspective, to ensure that CCPs' risk management decisions do not unnecessarily burden clearing members, clearing members' clients or other counterparties due to excessive procyclical features, thus unintentionally creating liquidity strains that could develop into solvency issues. In response to these recommendations, the ESRB expects CCPs to ensure that their risk management and resilience remain sound and continue to protect market participants against losses from defaults.

In particular, Sub-recommendation B(1) is aimed at ensuring that CCPs comprehensively capture in their liquidity stress testing any events that could lead to liquidity shortfalls, including the default of any two entities that provide services to the CCP and whose default could materially affect the liquidity position of the CCP, regardless of the nature of the CCP's counterparty that generated the liquidity stress. In this regard, a review of ESMA's draft technical standards developed under Article 44(2) EMIR is expected to improve overall market

⁷ On 15 and 16 September 2020, Keler CCP notified the Gas Market Clearing Members of the default of AIK Energy Austria GmbH. Mutualised resources were used but were subsequently paid back to non-defaulting members by the defaulter's estate (see the [news item on Keler CCP's website](#) and "[COVID-19 and CCP Risk Management Frameworks](#)", International Swaps and Derivatives Association, January 2021).



resilience, given that there is a large amount of concentration and interconnection in and among CCPs and their liquidity service providers, whether or not they are clearing members.

In addition, Sub-recommendation D(1) is aimed at ensuring that the relevant competent authorities contribute to discussions and efforts at the international level, through their participation in standard-setting bodies, where applicable, on “means to mitigate the procyclicality in margin and haircut practices in the provision of client services related to exchange traded and over-the-counter derivatives as well as securities financing transactions, whether centrally cleared or not centrally cleared”.



3 Assessment methodology

Recital 20 and Article 17 of the ESRB Regulation provide the ESRB with a mandate to monitor addressees' compliance with ESRB recommendations. To this effect, and pursuant to Article 20 of the ESRB Rules of Procedure⁸, the ESRB assesses the actions and justifications undertaken and communicated by the addressees of ESRB recommendations in accordance with the “act or explain” mechanism described in Article 17 of the ESRB Regulation, whereby the addressee of a recommendation can either (i) take action in response to a recommendation or (ii) adequately justify any inaction. The ESRB thus analyses the information provided by addressees and assesses whether the action taken duly achieves the objectives of the Recommendation, or whether the justification provided for inaction is sufficient. This analysis results in a compliance grade being assigned to each addressee reflecting the level of implementation by that addressee.

The assessment was based on the submissions made by the addressees by the reporting deadline specified in Section 2(4) of the Recommendation (i.e. 31 December 2021) and further dialogue between the Assessment Team and addressees in the course of the assessment process. This report thus reflects the implementation status as of 31 December 2021, taking into account the information provided by the addressees up to 17 October 2022.

The assessment follows the methodology provided for in the Handbook. The Assessment Team conducted a four-eyes review (i.e. the compliance of each addressee was assessed by two assessors). Given the narrow scope of this assessment, which focused on one sub-recommendation per addressee, the usual grading methodology was streamlined.

To ensure equal treatment of the addressees and the highest degree of transparency and consistency, the Assessment Team conducted its work in accordance with the following six assessment principles mentioned in Section 4 of the Handbook:

- **fairness, consistency and transparency** – all addressees should be treated equally throughout the assessment process;
- **efficiency and appropriateness** should be ensured of procedures with regard to available resources, while ensuring high-quality deliverables;
- **four-eyes review** – compliance of each addressee is assessed by at least two assessors who have not been directly involved in assessing the performance of the national authorities of the countries they come from;
- **effective dialogue** – communication with the addressees is essential to fill in information gaps on compliance;

⁸ Decision of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board (ESRB/2011/1) (OJ C 58, 24.2.2011, p.4).



- **principle of proportionality** – actions to be taken by the addressees should be country-specific and relative to the intensity of the risks targeted by a recommendation in a specific Member State;
- **the ultimate objective** is the prevention and mitigation of systemic risks to financial stability in the European Union.

All addressees were given the opportunity to provide further explanations and additional information. Using the communication channels established between the Assessment Team and the addressees, some respondents provided further details during the assessment process, including during the remedial dialogue.

3.1 Assessment criteria and implementation standards, grading methodology and principle of proportionality

The assessment criteria applied in this evaluation are based on best practices set out in previous assessments of compliance with ESRB recommendations. The assessment criteria describe the actions that should be taken by the addressees in order to achieve the objectives of the Recommendation. With this in mind, the Assessment Team took due account of the implementation criterion set out in Section 2(2) of the Recommendation (i.e. the principle of proportionality). Grading was then guided by the relevant implementation standards, which specify how different actions – or inaction – for each sub-recommendation should be reflected in the final grade.

3.1.1 Assessment criteria and implementation standards

The assessment criteria applied in this evaluation are based on best practices established in previous assessments of compliance with ESRB recommendations. To ensure a consistent and fair analysis, the Assessment Team developed implementation standards for each sub-recommendation against which the responses submitted by the addressees were assessed (see Annex II). The assessment criteria describe the actions that should be taken by the addressees to meet the objectives of the recommendations. Grading was then guided by the relevant implementation standards, which specify how different actions/inaction for each sub-recommendation should be reflected in the final grade.

While conducting the assessment, the Assessment Team analysed the content/substance of the actions taken by each addressee to assess whether they had complied with all the elements of the Recommendation.

3.1.2 Grading methodology

Given the narrow scope of this assessment, the usual grading methodology each addressee of the Recommendation was streamlined. As the actions of addressees were only



assessed on the basis of a single sub-recommendation (i.e. Sub-recommendation B(1) for ESMA and Sub-recommendation D(1) for relevant competent authorities), the four-step grading methodology set out in the Handbook was not relevant.

Therefore, it was only necessary to perform Step I of the grading methodology set out in the Handbook. **Each key element was assessed and graded based on the implementation** standards, in terms of the type of action (FC/LC/PC/MN or NC) or inaction (SE or IE) of each addressee (see Table 1). The level of compliance is also expressed in colour-coded form (see Table 2).

Table 1
Grading scale

Grading scale for action	
Fully compliant (FC)	The addressee complies entirely with the Recommendation.
Largely compliant (LC)	The objectives of the Recommendation have been met almost entirely and only negligible requirements are yet to be implemented.
Partially compliant (PC)	The most important requirements have been met. There are certain deficiencies that affect the implementation process, although this does not result in a situation where the Recommendation has not been acted on.
Materially non-compliant (MN)	The requirements have only been fulfilled to a degree, resulting in significant deficiencies in the implementation.
Non-compliant (NC)	Almost none of the requirements have been met, even though steps have been taken towards implementation.
Grading scale for inaction	
Sufficiently explained (SE)	A complete and well-reasoned explanation for failing to implement the Recommendation has been provided. If one or more of the sub-recommendations are intended to address a particular systemic risk that does not affect a particular addressee, this justification or explanation may be considered sufficient.
Insufficiently explained (IE)	The explanation given for the failing to implement the Recommendation is not sufficient to justify inaction.

Table 2
Colour codes for levels of compliance

Positive grades	Mid-grade	Negative grades
FC – Actions taken fully implement the recommendation		MN – Actions taken only to implement a small part of the recommendation
LC – Actions taken implement almost all of the recommendation	PC – Actions taken only to implement some of the recommendation	NC – Actions taken are not in line with the recommendation
SE – No actions were taken, but the addressee provided sufficient justification		IE – No actions were taken and the addressee did not provide sufficient justification



In addition, the Assessment Team strictly abided by the principles for assessment detailed above, to ensure that the compliance grades were completely transparent and the process was highly objective. Room was also left for high-quality expert judgement, including a review to understand the rationale behind the allocation of grades.

3.1.3 Principle of proportionality

In accordance with Section 2(2) of the Recommendation, “due regard should be paid to the principle of proportionality, taking into account the objective and the content of each recommendation”. The relevance of the principle of proportionality required the Assessment Team to take into account the materiality and the nature of the risk targeted when assessing the responses submitted by the addressees, in order to achieve the established policy objectives.

The Handbook states that “the principle of proportionality implies that an assessment takes account of the magnitude and the nature of the risk targeted when assessing the adequacy of the national framework intended to address the risk”. Different levels of risk should be addressed by commensurate levels of mitigating measures. Therefore, considering the objectives and the content of Sub-recommendation D(1) when assessing its implementation in particular, the Assessment Team took into account the specificities of the analysed jurisdictions to reach reasonable conclusions about the actions taken by the relevant competent authorities. The Team was especially mindful of the significant differences in the materiality of the client clearing business throughout Member States.

When conducting the assessment, the Assessment Team acknowledged that the different characteristics, complexity and size of the sector in each given jurisdiction would have an impact on the respective authorities’ participation in international fora and standard-setting bodies. As recommendations cannot be tailored to fit the size and structure of the markets in each jurisdiction, the Assessment Team noted these different backgrounds and took them into consideration during the assessment of Sub-recommendation D(1). In addition, and for reasons of efficiency, the Assessment Team also relied on the information provided by individual addressees during the assessment of the first part of the Recommendation.

Moreover, the Handbook establishes that “the Assessment Team may also take account of the legal powers of the addressee”. Considering the policy goals set by Sub-recommendation B(1) and the actions taken by the addressee to pursue these objectives using different tools, the Assessment Team took account of the difficulties reported by ESMA in adopting the regulatory adjustments required by Sub-recommendation B(1) in the light of ESMA’s interpretation of the legal basis for the relevant technical standards. Likewise, the Assessment Team gave due consideration to the complementary action carried out by ESMA to comply with the Recommendation.

3.2 Issues encountered by the Assessment Team

The Assessment Team encountered a number of specific issues during the implementation of the methodology described in Section 3.1.



With regard to Sub-recommendation B(1), the Assessment Team considered the response provided by ESMA, explaining that according to its interpretation of Article 44(1) EMIR it was not possible to revise Article 32(4) of Commission Delegated Regulation (EU) No 153/2013 (the “Delegated Regulation”) in order to meet the requirements of Sub-recommendation B(1), despite its overall alignment with the policy goals set by the Recommendation.

ESMA expressed the view that the drafting of Article 32(4) of the Delegated Regulation cannot go beyond the scope of the entities referred to in the Level 1 enabling provisions (Articles 44(1) and (2) EMIR), and for that reason Article 32(4) cannot be amended as called for in Sub-recommendation B(1). In that sense, ESMA believes that it would be necessary to amend Article 44(1) EMIR to allow for the revision of Article 32(4) of the Delegated Regulation in the sense suggested by the Recommendation.

The Assessment Team concluded, also on the basis of its close interaction with the ESRB Secretariat’s legal team, that 44(1) EMIR could be interpreted more broadly, with the formulation of the article being interpreted not as limiting the scope of relevant entities that could be a source of liquidity risk to CCPs, but rather as setting a minimum threshold in respect of the exposures that must be considered in stress scenarios. However, the Assessment Team deems it necessary to report the constraints encountered by ESMA given its interpretation of Article 44(1) EMIR, and the difficulties this posed in the process of assessing its compliance with this sub-recommendation. In that respect, the Assessment Team respectfully notes that the forthcoming EMIR review could provide a valuable opportunity for the European legislators to address the legal concerns brought to the fore by ESMA⁹.

The Assessment Team also noted specific issues in the assessment of Sub-recommendation D(1). First, the Assessment Team decided to follow an institution-specific approach in the sense that the assessment of authorities that participated in international fora and steered discussions, as recommended by the ESRB, had no impact on the assessment of other authorities of the same Member State.

Second, the Assessment Team had to define the term “international level” before it could determine the extent to which addressees of this sub-recommendation contributed to steering the discussion at international level on “means to mitigate the procyclicality in margin and haircut practices in the provision of client services related to exchange traded and over-the-counter derivatives, as well as securities financing transactions”. The Assessment Team concluded that the term “international level” encompasses inter-jurisdictional standard-setting bodies such as the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO) and the Committee on Payments and Market Infrastructures (CPMI).

Moreover, the Assessment Team encountered difficulties defining what level of activity of authorities within the international standard-setting bodies could be considered as an “active” contribution to steering discussions at international level, in line with the implementation standards

⁹ On 7 December 2022, the European Commission has published a Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets, COM(2022) 697 final, 2022/0403(COD). Its proposed amendments to Article 44(1) require CCPs to take into account the liquidity risk generated by the default of at least the two entities to which it has the largest exposures, including clearing members and liquidity service providers.



(see Annex II). In particular, it was necessary to distinguish between those authorities that only endorsed the outcome of international policy discussions and those that participated directly in the relevant working groups. Identifying a way to measure the level of contribution of authorities within working groups proved challenging.



4 Results of the assessment

The assessment revealed a significant degree of compliance with the Recommendation across all addressees.¹⁰ This section provides the assessment's results for the addressee of Sub-recommendation B(1) (Section 4.1) and an overview of the assessment's results for all the addressees of Sub-recommendation D(1), as well as the detailed assessments following the EU protocol order for countries (Section 4.2).

4.1 Details of compliance of ESMA with Sub-recommendation B(1)

Sub-recommendation B(1)	Grade
Review of draft technical standards	Largely compliant

4.2 Details of addressees' compliance with Sub-recommendation D(1)

Table 3 below provides an overview of the compliance grades for the addressees (i.e. relevant competent authorities) of Sub-recommendation D(1).

¹⁰ See Annex II for a full description of the compliance criteria.



Table 3

Compliance grades for addressees of Sub-recommendation D(1)

Addresses		Overall assessment grade	Addresses		Overall assessment grade
AT	FMA	SE	IS	CB	SE
BE	FSMA	SE	IT	Bdl	FC
	NBB	SE		CONSOB	FC
BG	FSC	SE		COVIP	SE
	BNB	SE		IVASS	SE
CY	CBC	SE	LI	FMA	SE
	CySEC	SE	LT	LB	SE
	ICCS - MoF	SE	LU	CSSF	LC
CZ	CNB	SE		CAA	SE
DE	DBB	FC	MT	MFSA	SE
	BAFIN	FC	LV	FCMC	SE
DK	DFSA	SE	NL	DNB	FC
EE	FSA	SE		AFM	SE
ES	BdE	SE	NO	FIN	SE
	CNMV	FC	PL	KNF	SE
FI	FSA	SE	PT	BdP	SE
	MoF	SE		CMVM	LC
FR	BDF	FC		GREARI	SE
	AMF	FC	SE	FI	LC
	ACPR	FC		BG	SE
GR	BoG	SE	RO	ASF	SE
	HCMC	SE		BNR	SE
HR	CNB	SE	SI	AZN	SE
	HANFA	SE		ATVP	SE
HU	MNB	SE		BoS	SE
IE	CB	LC	SK	NBS	SE
	PA	SE		ECB	FC



5 Conclusion

In the responses provided by the addressees, the Assessment Team encountered several issues that showed there was a need for extensive dialogue.

With regard to Sub-recommendation B(1), the Assessment Team notes that ESMA reported difficulties in revising Article 32(4) of the Delegated Regulation in order to meet the Recommendation, as its interpretation of Article 44(1) EMIR led it to the conclusion that the Delegated Regulation can only require CCPs to consider in their stress scenarios the default of the two clearing members to which the CCP has the largest exposures. CCPs may not be required to consider other liquidity service providers whose default could materially affect their liquidity positions, as that would go beyond the scope of the entities referred to in the Level 1 enabling provisions. In that sense, ESMA believes that it would be necessary to amend Article 44(1) EMIR to allow for the revision of Article 32(4) of the Delegated Regulation.

The Assessment Team, also following close interaction with the legal team of the ESRB Secretariat, concluded that it is possible to interpret Article 44(1) EMIR more broadly, in the sense that its formulation could be interpreted as not limiting the range of relevant entities that could be a source of liquidity risk to CCPs, but rather as setting a minimum threshold in respect of the exposures that should be considered in stress scenarios. However, the Assessment Team deems it necessary to report the difficulties experienced by ESMA in complying with the Recommendation in light of its interpretation of Article 44(1) EMIR. In addition, the Assessment Team respectfully notes that the fact that the forthcoming EMIR review could provide a valuable opportunity for the European legislators to address ESMA's legal concerns¹¹.

With regard to the assessment of Sub-recommendation D(1), due to the high level of concentration of central clearing in the EU, which is reflected in a relatively small number of authorised CCPs and few large clearing members, the principle of proportionality applied to a large number of addressees. The principle was applied to account for the diverse supervisory landscape for CCPs, clearing members and their clients throughout EU Member States. The primary criterion when considering the materiality assessment of the Recommendation was whether the given addressee had any CCPs or clearing members under its direct supervision.

The Assessment Team also noted other specific issues in the assessment of Sub-recommendation D(1). First, the Assessment Team decided to follow an institution-specific approach in the sense that the assessment of authorities that participated in international fora and steered discussions in the manner recommended by the ESRB did not have any impact on the assessment of other authorities of the same Member State. Second, the Assessment Team needed to define the term "international level" before it could determine the degree to which addressees of this Recommendation contributed to steering the discussion at such a level on "means to mitigate the

¹¹ On 7 December 2022, the European Commission has published a Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets, COM(2022) 697 final, 2022/0403(COD). Its proposed amendments to Article 44(1) require CCPs to take into account the liquidity risk generated by the default of at least the two entities to which it has the largest exposures, including clearing members and liquidity service providers.



procyclicality in margin and haircut practices in the provision of client services related to exchange traded and over-the-counter derivatives, as well as securities financing transactions". The Assessment Team concluded that the term "international level" encompasses the BCBS, IOSCO and the CPMI.

Moreover, the Assessment Team encountered difficulties defining the level of activity of authorities within the international standard-setting bodies that could be considered as making an "active" contribution to steering discussions at international level, in line with the implementation standards (see Annex II). In particular, it was necessary to distinguish between authorities that only endorsed the outcome of international policy discussions and those that participated directly in the relevant working groups. Identifying a way to measure the level of the contribution made by authorities within working groups proved challenging.

Overall, with regard to the provisions to be implemented by 31 December 2021, the Assessment Team found ESMA to be largely compliant with Sub-recommendation B(1), while it observed a significant level of compliance with Sub-recommendation D(1)



Annex I: Composition of the Assessment Team

(approved by the Advisory Technical Committee via Written Procedure ATC/WP/2022/004, 27 January 2022)

Chairperson	Institution
Pietro Stecconi	Banca d'Italia

Assessment Team	Institution
Cristina Di Luigi	Banca d'Italia
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Annex II: Compliance criteria and implementation standards

Review of the draft technical standards under Regulation (EU) No 648/2012 Sub-recommendation B(1)	
Fully compliant (FC)	ESMA has reviewed the draft technical standards under Regulation (EU) No 648/2012, and in particular Article 32(4) of those draft technical standards, to include provisions that require CCPs to include in their stress scenarios under Article 44 of Regulation (EU) No 648/2012 the default of any two entities that provide services to the CCP and whose default could materially affect the liquidity position of the CCP.
Largely compliant (LC)	ESMA has demonstrated that it has committed to implementing this sub-recommendation in the near future and has provided sufficient insights into the planned implementation of the sub-recommendation and a precise date for this future implementation; or ESMA has reviewed the draft technical standards under Regulation (EU) No 648/2012, and in particular Article 32(4) of those draft technical standards, but the review overlooks certain elements; or despite not having strictly complied with the recommendation, ESMA has committed to implementing measures which will make it possible to achieve financial stability objectives which are comparable with those set by the ESRB in its recommendation.
Inaction sufficiently explained (SE)	ESMA has provided evidence that there is no need to review the technical standards to include provisions requiring CCPs to include in their stress scenarios the default of any of the two entities that provide services to the CCP and whose default could materially affect the liquidity position of the CCP.
Partially compliant (PC)	ESMA has demonstrated that it has committed to implementing this sub-recommendation, but either it has not provided a precise date or it has provided a date that is not in the near future; or ESMA has reviewed the draft technical standards under Regulation (EU) No 648/2012, and in particular Article 32 (4) of those draft technical standards, but the review overlooks material elements
Materially non-compliant (MN) -	ESMA did not implement this sub-recommendation; ESMA provides a generic commitment without any precise timeline.
Non-compliant (NC)	ESMA did not implement this sub-recommendation and has not provided any justification for its inaction.
Inaction insufficiently explained (IE)	ESMA did not implement this sub-recommendation and has provided justification for its inaction which, however, is inadequate.



Steering discussions at international level on the means used to mitigate the procyclicality in the provision of client clearing services and in securities financing transactions
Sub-recommendation D(1)

Fully compliant (FC)	Relevant competent authority, regardless of the materiality of the client clearing activity performed by the supervised/overseen entities, contributed actively (e.g. through its participation in ad hoc groups) to steering discussions at international level (i.e. beyond the EU level) on “means to mitigate the procyclicality in margin and haircut practices in the provision of client services related to exchange traded and over-the-counter derivatives as well as securities financing transactions, whether centrally cleared or not centrally cleared”.
Largely compliant (LC)	Relevant competent authority, with a material interest in the client clearing activity performed by the supervised/overseen entities has demonstrated it has endorsed international decisions on “means to mitigate the procyclicality in margin and haircut practices in the provision of client services related to exchange traded and over-the-counter derivatives as well as securities financing transactions, whether centrally cleared or not centrally cleared”.
Inaction sufficiently explained (SE)	Relevant competent authority has demonstrated (with quantitative evidence, if needed) or has demonstrated during the first assessment of the Recommendation that i) the lack of sufficient material activity justifies the absence of action or ii) it has no access to the relevant international fora or standard-setting bodies.
Partially compliant (PC)	Not applicable
Materially non-compliant (MN) -	Not applicable
Non-compliant (NC)	Relevant competent authority, with a material interest in the client clearing activity performed by the supervised/overseen entities, and with demonstrated access to the relevant international fora and standard-setting bodies, did not take action.
Inaction insufficiently explained (IE)	Not applicable



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For specific terminology please refer to the [ESRB glossary](#) (available in English only).

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