Ingrid Sundin

Från: Susanna Wiener <susanna.wiener@regeringskansliet.se>
Skickat: den 13 december 2022 20:00
Till: [redacted]

[redacted] ett nytt direktiv om aktiers olika röstvärde - inbjudan att lämna synpunkter senast 20 dec
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Hej!

E.U.
Ni bereds tillfälle att lämna synpunkter på EU-kommissionens förslag om ett nytt direktiv om aktiers olika röstvärde.
Eventuella synpunkter bör ha kommit in till Justitiedepartementet senast tisdagen den 20 december 2022.

Se bif. dok.

Med vänlig hälsning

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Regeringskansliet

Regeringskansliet

2022-12-13
Ju2022/03596

Justitiedepartementet
Enheten för fastighetsrätt och associationsrätt

Se sändlista

Inbjudan att lämna synpunkter på Europeiska kommissionens förslag om ett nytt direktiv om aktiers olika röstvärde

Europeiska kommissionen presenterade nyligen ett förslag till ett nytt direktiv om aktiers olika röstvärde, *Multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market*. Förslaget och konsekvensanalysen finns på kommissionens webbplats: Capital markets union: clearing, insolvency and listing package (europa.eu).

Ni får nu tillfälle att lämna synpunkter på förslaget. Era synpunkter är värdefulla för det fortsatta arbetet. Varken myndigheter under regeringen eller någon annan är dock skyldig att svara på denna inbjudan.

Eventuella synpunkter bör ha kommit in till departementet senast **tisdagen den 20 december 2022.** Vi beklagar den korta fristen. Synpunkter som kommer in efter att fristen gått ut kommer att beaktas, men hänsyn kan inte tas till dem när vi upprättar den faktapromemoria med regeringens preliminära ställningstagande som ska lämnas till riksdagen.

Frågor kan ställas till Anna-Stina Gillqvist, tel. 08-405 96 97. Vi ser helst att yttranden ges in genom e-post både till adressen ju.registrator@regeringskansliet.se och till adressen L1@regeringskansliet.se. Vänligen ange diarienumret Ju2022/03596 och avsändare i rubrikfältet.

Med vänlig hälsning

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Swedish FinTech Association
Swedish Private Equity & Venture Capital Association (SVCA)
Tillväxtverket
Vinge

EUROPEAN
COMMISSION

Brussels, 7.12.2022
COM(2022) 697 final

2022/0403 (COD)

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

(Text with EEA relevance)

{SEC(2022) 697 final} - {SWD(2022) 697 final} - {SWD(2022) 698 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EU) No 648/2012[1] (the European Market Infrastructure Regulation or "EMIR") regulates derivatives transactions, including measures to limit their risks through clearing in central counterparties (CCPs).[2] CCPs take on the risks faced by the parties to a trade, becoming the buyer to every seller and the seller to every buyer. By doing so, they increase market transparency and efficiency and reduce the risks in financial markets, especially for derivatives.

EMIR was adopted in the wake of the 2008/2009 financial crisis to promote financial stability and to make markets more transparent, more standardised, and thus safer. EMIR requires that derivatives transactions are reported to ensure market transparency for regulators and supervisors and that their risks are appropriately mitigated through central clearing at a CCP or by exchanging collateral, known as 'margin', in bilateral transactions. CCPs, and the risks they manage, have grown considerably since the adoption of EMIR.

In 2017, the Commission published two legislative proposals amending EMIR, both of which were adopted by the co-legislators in 2019. EMIR REFIT[3] recalibrated some of the requirements under EMIR to ensure their proportionality, while ensuring financial stability. Acknowledging the emerging issues related to the increasing concentration of risks in CCPs, in particular third-country CCPs, EMIR 2.2[4] revised the supervisory framework and set out a process for assessing the systemic nature of third-country CCPs by the European Securities and Markets Authority (ESMA) in cooperation with the European Systemic Risk Board (ESRB) and the central banks of issue. EMIR is complemented by the CCP Recovery and Resolution Regulation[5], adopted in 2020,[6] to prepare for the unlikely – though massively impactful - event that an EU CCP faces severe financial distress.[7]

Whilst EMIR has established a robust framework for central clearing, certain areas of the current supervisory framework have proven overly complex. This limits EU CCPs' ability to

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1 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.

2 See Annex 7 of the accompnaying Impact Assessment for a detailed background on derivatives and how CCPs operate within financial markets.

3 Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance.); OJ L 141, 28.5.2019, p. 42–63.

4 Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs; OJ L 322, 12.12.2019, p. 1–44.

5 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties, OJ L 22, 22.1.2021, p. 1–102.

6 The Regulation builds on the standards developed by the Financial Stability Board in the aftermath of the financial crisis. See "Key Attributes of Effective Resolution Regimes for Financial Institutions", Financial Stability Board (November 2011) http://www.financialstabilityboard.org/publications/r_111104cc.pdf. Updated in October 2014 with sector-specific annexes http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pd .

7 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties, OJ L 22, 22.1.2021, p. 1–102.

attract business both within the EU and internationally. The supervisory approval procedures for launching new clearing services and activities by EU CCPs, as well as changes in their risk models, are in many cases unnecessarily long and burdensome. The current rules are there to ensure the safety and soundness of EU CCPs, but this could be done in many ways and the existing processes have been challenged as too slow and, at times, disproportionate in light of the envisaged change. It should not take years for approving a new product, and changes to risk models need to be swift to reflect changing market and economic circumstances. Delays in approvals increase costs and reduce the attractiveness of EU CCPs, and consequently of the EU as a place to do business. The proposal aims at mitigating these obstacles in order to foster modern and competitive CCPs in the EU that can attract business.

EMIR provides a comprehensive and robust prudential framework for CCPs and the newly adopted CCP Recovery and Resolution Regulation further strengthens the soundness of EU CCPs. This proposal aims for the EU to continue to base the evolution of its central clearing ecosystem on the strength of its rules and supervision. Robust and safe CCPs enhance the trust of the financial system and crucially support the liquidity of key markets. A safe, robust and resilient clearing ecosystem is a pre-condition for it to grow further. The EU central clearing ecosystem should enable EU firms to hedge their risks efficiently and safely, while at the same time safeguarding the wider financial stability. In this way, central clearing will support the EU economy. This proposal aims to put firms in a better position by being able to predict the liquidity needs associated with central clearing. A competitive and efficient EU clearing ecosystem will increase central clearing activities, but central clearing also entails risks by centralising transactions in a few CCPs being financially systemically important. Hence, those risks must be appropriately managed by CCPs and CCPs must continue to be thoroughly supervised both at the national and the wider EU level. Therefore, this proposal aims at ensuring a robust and joined-up supervision, building on the supervisory system the EU currently has in place.

In addition, since 2017, concerns have been repeatedly expressed about the ongoing risks to the EU financial stability arising from the excessive concentration of clearing in some third-country CCPs, notably in a stress scenario. High-risk but low-probability events can happen, and the EU must be prepared to face them[8]. While EU CCPs have generally proven resilient, experience has shown that the EU clearing ecosystem can be made stronger, to the benefit of financial stability. However, open strategic autonomy also means that the EU needs to safeguard itself against the financial stability risks which can arise when EU market participants are excessively reliant on third-country entities, as this can be a source of vulnerability. Therefore, this proposal aims at making the equivalence framework in EMIR more proportionate and to better tailor cooperation with foreign supervisors taking into account the risks posed by CCPs based in third countries – and without compromising on the need for third countries to have sound rules in place. It is also proposed that the equivalence procedure is made simpler when the risks involved in central clearing in a third country are particularly low. In addition, this proposal seeks to build up the EU's central clearing capacity and thereby increase liquidity at EU CCPs with the aim to reduce the risks posed to the EU financial stability by excessive exposures to third-country CCPs. Therefore, this proposal requires all market participants subject to a clearing obligation, to hold active accounts at EU CCPs for clearing products that have been identified by ESMA as of substantial systemic importance for the EU financial stability.

8 […]

This proposal is complemented by a proposal for a Directive introducing a limited number of changes to Directive 2013/36/EU[9] (Capital Requirements Directive or 'CRD'), Directive (EU) 2019/2034[10] (Investment Firms Directive or 'IFD') and Directive 2009/65/EU[11] (Undertakings for Collective Investment in Transferable Securities Directive or 'UCITS Directive') as regards the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions. These amendments are necessary to ensure that the objectives of this EMIR review are achieved as well as to assure coherence. The two proposals should therefore be read in conjunction.

- **Consistency with existing policy provisions in the policy area**

This proposal is related to, and consistent with, other EU policies and ongoing initiatives that aim to (i) promote the Capital Markets Union (CMU) [12], (ii) reinforce the EU's open strategic autonomy and (iii) enhance the efficiency and effectiveness of EU-level supervision.

First, clearing capacity is an important dimension for the CMU. The CMU is about building deep and liquid EU capital markets that can serve the needs of EU citizens, businesses and financial institutions. The Covid-19 crisis has made it more urgent to deliver on CMU as market-based financing is an essential component for the European economy's recovery and the return to long-term growth. Safe, robust and competitive post-trade arrangements, in particular central clearing, in the EU is essential for a well-functioning CMU. The proposed legislative changes, including to further strengthen the supervisory framework, would contribute to the development of a more efficient and safer post-trading landscape in the EU.

Second, competitive, well-developed and resilient EU CCPs are a pre-condition for the EU's open strategic autonomy. The Commission Communication on open strategic autonomy[13] sets out how the EU can reinforce its open strategic autonomy in the macro-economic and financial fields by, in particular, but not only, further developing EU financial market infrastructures and increasing their resilience. Building a strong EU central clearing system with robust capacity reduces risks stemming from excessive reliance on third-country CCPs and their supervisors.

Third, **recent developments in energy markets**, with several energy companies facing liquidity issues when using derivatives markets, have also illustrated that EMIR needs to be enhanced so that the risks to the EU's financial stability continue to be mitigated in light of new challenges. This means building a safe, robust and competitive EU central clearing ecosystem, able to withstand economic shocks.

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9 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013.

10 Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, OJ L 314, 5.12.2019.

11 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), OJ L 302, 17.11.2009.

12 Communication from the Commission, A Capital Markets Union for people and businesses – New action plan, COM(2020) 590

13 Communication from the Commission to The European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions The European economic and financial system: fostering openness, strength and resilience; COM/2021/32 final.

- **Consistency with other Union policies**

This initiative should be viewed within the context of the broader Commission agenda to make the EU markets safer, more robust, more efficient and competitive. It aims at ensuring that post-trade arrangements, in particular central clearing, that are an essential element of capital markets are equally safe, robust, efficient and competitive. A fully functioning and integrated market for capital will allow the EU's economy to grow in a sustainable way and be more competitive, in line with the strategic priority of the Commission for an Economy that Works for People, focused on creating the right conditions for job creation, growth and investment.

The initiative in question has no direct and/or identifiable impacts leading to significant harm or affecting the consistency with the climate-neutrality objectives and the obligations of the European Climate Law.[14]

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

EMIR sets out the regulatory and supervisory framework for CCPs established in the EU and third-country CCPs that provide central clearing services to clearing members or trading venues established in the EU. The legal basis for EMIR is Article 114 of the Treaty of the Functioning of the European Union (TFEU) as it establishes common rules for OTC derivatives, CCPs and trade repositories to avoid divergent national measures or practices and obstacles to the proper functioning of the internal market while ensuring financial stability. Considering that this initiative proposes further policy actions to ensure the achievement of these objectives, the related legislative proposal would be adopted under the same legal basis.

- **Subsidiarity (for non-exclusive competence)**

The problems identified in the impact assessment cannot be addressed by Member States acting alone and necessitate EU action. This proposal amends EMIR, in particular to enhance the attractiveness of EU CCPs by facilitating their ability to bring new products to market and reducing compliance costs and strengthening EU-level supervision of EU CCPs. EU action would therefore lead to reducing EU's excessive reliance on third-country CCPs and thus reduce the risks to EU financial stability. A safe, robust, efficient and competitive market for central clearing services contributes to deeper, more liquid markets in the EU and is essential for a well-functioning CMU.

Member States and national supervisors cannot on their own solve the systemic risks of highly integrated and interconnected CCPs that operate on a cross-border basis beyond the scope of national jurisdictions. Nor can they mitigate risks arising from diverging national supervisory practices. Member States also cannot on their own enhance the attractiveness of EU CCPs and address the inefficiencies of the framework for the cooperation of national supervisors and EU authorities. As such, the aim of EMIR to increase the safety, robustness, efficiency and competitiveness of EU CCPs in the single market and ensure financial stability cannot be sufficiently achieved by Member States, as the co-legislators acknowledged in 2012 when adopting EMIR (and in 2019 when adopting EMIR REFIT and EMIR 2.2). Therefore,

[14] Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021.

by reason of the scale of actions, these objectives can be better achieved at EU level in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

The proposal aims to ensure that the objectives of EMIR are met in a proportionate, effective and efficient manner. Given the nature of this proposal, there is a key trade-off between the effectiveness of measures to increase clearing at EU CCPs and the cost impact on clearing participants. This trade-off is to be considered in the calibration and design of the measures themselves, so as to make costs proportionate. The proposal also reviews the supervisory arrangements for EU CCPs to address the challenges they face due to inefficient authorisation processes. In addition, changes to the supervisory architecture aim at reflecting the need for increased cooperation of authorities in the EU due to the growing importance of EU CCPs while preserving the fiscal responsibilities of the authorities of the Member State of establishment. Furthermore, the introduction of an active account requirement, the establishment of monitoring at EU level regarding the transfer of EU firms' excessive exposures from systemically important third-country CCPs ('Tier 2 CCPs') to EU CCPs and the ex-post approval/non-objection procedure for certain changes to CCPs' risk models as well as for the extension of the services they offer, take into account the concerns raised by stakeholders, including ESMA, while safeguarding the objectives of EMIR. The proposal does not go beyond what is necessary to achieve these objectives, considering the need to monitor and to mitigate any risks the operations of CCPs, including third-country CCPs, may raise for financial stability. The proportionality of the preferred policy options is further assessed in Chapters 7 and 8 of the accompanying Impact Assessment.

- **Choice of the instrument**

EMIR is a Regulation and thus it needs to be amended by a legal instrument of the same nature.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission services consulted extensively, engaging with a broad range of stakeholders, including EU bodies (ECB, European Systemic Risk Board (ESRB), European Supervisory Authorities (ESAs)), Member States, members of the European Parliament's Economic and Monetary Affairs Committee, the financial services sector (banks, pension funds, investment funds, insurance companies, etc.) as well as non-financial corporates to evaluate whether EMIR sufficiently ensures EU financial stability. This process showed that there are ongoing risks to EU financial stability due to the excessive concentration of clearing in a few third-country CCPs. These risks are particularly relevant in a stress scenario.

Nonetheless, considering the relatively recent entry into force of EMIR 2.2 and the fact that some requirements do not apply yet,[15] the Commission services did not consider it appropriate to prepare a full back-to-back evaluation of the entire framework. Instead, key areas were identified upfront based on stakeholder input and internal analysis (Section 3 of the

[15] For example, the regulatory technical standards (RTS) on the procedures for the approval of an extension of services or the approval of changes to risk models under Articles 15 and 49 of EMIR respectively have not been adopted yet.

accompanying Impact Assessment on the problem definition explains in detail the the inefficiencies and ineffectiveness of the current rules).

- **Stakeholder consultations**

The Commission has consulted stakeholders throughout the process of preparing this proposal. In particular through:

- a Commission targeted consultation between 8 February and 22 March 2022[16]. It was decided that the consultation should be targeted and the questions were focused on a very specific and rather technical area. 71 stakeholders responded to the targeted consultation via the online form while some confidential responses were also submitted via email.
- a Commission Call for Evidence between 8 February and 8 March 2022[17].
- consultations of stakeholders through the Working Group on the opportunities and challenges of transferring derivatives from the United Kingdom (UK) to the EU, in the first half of 2021 including several stakeholder outreach meetings in February, March and June 2021.
- meeting with Members of the European Parliament on 4 May as well as bilateral meetings subsequently.
- meeting with Member States' experts on 30 March 2022, 16 June 2022 and 8 November 2022.
- meetings of the Financial Services Committee on 2 February and 16 March 2022.
- meetings of the Economic and Financial Committee on 18 February and 29 March 2022.
- bilateral meetings with stakeholders as well as confidential information received from a wide range of stakeholders.

The main messages of this consultative process were:

- Work starting in 2021 showed that improving the attractiveness of clearing, encouraging the development of EU infrastructures and strengthening the supervisory arrangements in the EU will take time.
- A variety of measures were identified that could help improve the attractiveness of EU CCPs and clearing activities as well as ensure that their risks are appropriately managed and supervised.
- These identified measures are not only within the remit of the Commission and co-legislators, but could also potentially require actions from the ECB, national central banks, ESAs, national supervisory authorities, CCPs and banks.
- The consultation showed that market participants generally prefer a market-driven approach to regulatory measures, to minimise costs and for EU market participants to remain competitive internationally. Nevertheless, regulatory measures were

[16] https://ec.europa.eu/info/business-economy-euro/banking-and-finance/regulatory-process-financial-services/consultations-banking-and-finance/targeted-consultation-review-central-clearing-framework-eu_en

[17] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13378-Derivatives-clearing-Review-of-the-European-Market-Infrastructure-Regulation_en

supported to a certain extent, especially when allowing for a faster approval process for CCPs' new products and services[18].

- Measures deemed useful to enhance EU CCP's attractiveness were: maintaining an active account with an EU CCP, measures to facilitate expanding services by EU CCPs, broadening the scope of clearing participants, amending hedge accounting rules and enhancing funding and liquidity management conditions for EU CCPs.

The proposal takes this stakeholder feedback into account, as well as the feedback received through meetings with a broad range of stakeholders, EU authorities and institutions. It introduces targeted amendments to EMIR aimed at:

- Improving the attractiveness of EU CCPs by simplifying the procedures for launching products and changing models and parameters and introducing a non-objection/ex-post approval/review for certain changes. This allows EU CCPs to introduce new products and model changes more quickly while ensuring adequate risk considerations are upheld and without endangering financial stability and therefore making EU CCPs more competitive.
- Encouraging central clearing in the EU to safeguard financial stability by requiring clearing members and clients to hold, directly or indirectly, an active account at EU CCPs, and facilitating clearing by clients will help to reduce exposures to, and with it excessive reliance on, Tier 2 third-country CCPs which is a risk to the financial stability of the EU.
- Enhancing the assessment and management of cross-border risk by ensuring that authorities in the EU have adequate powers and information to monitor risks in relation to both EU and third-country CCPs, including by enhancing their supervisory cooperation within the EU.
- **Collection and use of expertise**

In preparing this proposal the Commission relied on the following external expertise and data:

- **ESMA's Report** under Article 25(2c) of EMIR submitted to the Commission in December 2021[19]; the report also took into account answers to ESMA's surveys and data collection exercises from CCPs and clearing participants;
- **ESRB's response** to ESMA's consultation under Article 25 (2c) EMIR, issued in December 2021[20];
- **Bank for International Settlement** statistics;
- **CEPS**, 2021, "Setting EU CCP policy – much more than meets the eye"; and
- **ClarusFT** database.

[18] Rather no/limited support regarding higher capital requirements in the CRR for exposures to Tier 2 non-EU CCPs , exposure reduction targets toward specific Tier 2 non- EU CCPs, an obligation to clear in the EU and macroprudential tools.

[19] ESMA report on UK CCPs, 2021.

[20] https://www.esrb.europa.eu/pub/pdf/other/esrb.letter220120_on_response_to_esma_consultation~3182592790.en.pdf

This input has been complemented with, at times confidential, quantitative and qualitative input from financial markets participants.

- **Impact assessment**

The Commission conducted an impact assessment of relevant policy alternatives. Policy options were identified based on the following four drivers: (i) complex, lengthy and burdensome procedures, (ii) limited participation in EU CCPs and concentration in incumbent CCPs, (iii) interconnectedness of the EU financial system, (iv) inefficient framework for supervisory cooperation. The policy options were assessed against the specific objectives of improving the attractiveness of EU CCPs, encouraging clearing in EU CCPs and enhancing the assessment and management of cross-border risks.

The Impact Assessment received a positive opinion with comments by the Regulatory Scrutiny Board[21] on 14 September 2022 which made the following main recommendations for improvements:

- explain what success would look like and how it will be effectively monitored;
- make the range of options considered more comprehensive;
- bring out the rationale behind, and the envisaged design of, key measures to be dealt with through implementing regulation and clarify the criteria and parameters that will frame their development.

The requested clarifications were added in the relevant sections of the Impact Assessment.

Based on the assessment and comparison of all policy options, the Impact Assessment concluded on the following preferred policy options:

- **Measures to improve the attractiveness of EU CCPs**: a combination of measures simplifying the procedures for launching products and changing models as well as introducing an ex-post approval/non-objection procedure for certain changes was identified as the preferred option. These measures would simplify current procedures while preserving financial stability. Simplifying the procedures for launching products and changing models as well as introducing an ex-post/non-objection approval/review for certain changes were also assessed as separate options. However, as they would individually only partially meet the objectives, a combination of both options was deemed most appropriate to meet the outlined objectives.
- **Measures to encourage central clearing in the EU to safeguard financial stability**: a combination of different options was considered most appropriate to meet the objectives, which would include the following aspects: i) requiring clearing members and clients to hold an active account at EU CCPs; ii) ensuring compliance with the new requirements on clearing activities; iii) encouraging public entities that clear voluntarily through a CCP to do so in the EU via a Communication; and iv) facilitating central clearing. Combining these options would allow to address excessive reliance on Tier 2 CCPs, increase central clearing in the EU and remove obstacles to central clearing. Some of these measures may entail level 2 acts setting out the specific aspects. The

[21] Add link to positive RSB opinion

policy options have also been assessed separately but a combination of the options was considered most effective to meet the objectives.

- **Measures to enhance the assessment and management of cross-border risks**: targeted amendments to the current supervisory framework were deemed most appropriate and proportionate as they attain the right balance between achieving the following objectives: (i) strengthen the framework for robust consideration of cross-border risks, (ii) enhance EU financial stability, and (iii) improve the attractiveness of EU CCPs, while acknowledging that resolution decisions impacting CCPs, clearing members and clients are taken at national level and Member States remain ultimately responsible for supporting financially CCPs authorised in their jurisdiction.
- The overall package of options will have a positive effect on the post-trading landscape in the EU by improving the attractiveness of EU CCPs, encouraging central clearing in the EU, enhancing the assessment and management of cross-border risk and thus contributing to the competitiveness of the EU financial markets as well as EU financial stability.

• **Regulatory fitness and simplification**

The initiative aims to enhance the attractiveness of EU CCPs, reduce the excessive reliance of EU market participants on non-EU CCPs, safeguard EU financial stability and enhance the EU's open strategic autnomy. As such, it does not aim at reducing costs per se. However, the preferred policy option to increase EU CCPs' attractiveness will lead to a simplification of procedures for EU CCPs, reducing administrative burdens and making their operations more efficient, thus also bringing about a reduction of costs. The approximate range of these cost savings has been estimated based on interactions with stakeholders and several assumptions which were needed to extrapolate the effects to the whole EU. This cost saving is of administrative nature and thus counts under the "one in, one out" approach as an "out" in the range of approx. EUR 5 million to EUR 15 million (EU total). This is likely to be concentrated in few EU CCPs (as few EU CCPs might bring new products to the market in a given year) and is likely to be beneficial in terms of their attractiveness. As regards potential additional costs relevant for "one in one out", i.e. very limited paperwork related to opening an account with a CCP, the administrative costs are negligible (for more details, see Annex 3 of the accompanying Impact Assessment)

As regards the active account requirement, based on estimates of the Commission services on the basis on confidential information, roughly 60% of the EU clients of EU clearing members already have an account for clearing interest rate swaps at an EU CCP, and roughly 85% have one for credit default swaps. Thus, for these clients opening an account at an EU CCP for these types of products would not be an additional cost. In addition, any cost could depend on which CCP they participate in: according to confidential information provided to the Commission services, in some EU CCPs, for example, the costs of an account per se are zero under certain conditions. The active account requirement will be further specified in an RTS to be prepared by ESMA, which will be subject to a public consultation and a cost benefit analysis.

• **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, this proposal respects these rights, in particular the economic rights, as listed in the main United Nations conventions on human

rights, the Charter of Fundamental Rights of the European Union which is an integral part of the EU Treaties, and the European Convention on Human Rights.

4. BUDGETARY IMPLICATIONS

The proposal will have no implications for the budget of the Union.

This legislative initiative will have no impact on expenditures for ESMA or other bodies of the European Union.

The impact assessment identified only moderate additional costs for ESMA, while at the same time the proposed measures create efficiencies that will lead to cost reductions. In addition, some provisions clarify and recalibrate the role of ESMA whilst not constituting new tasks and are therefore to be considered budget neutral.

Costs identified relate to the setting up and operation of a new central database, i.e. an IT tool for the submission of supervisory documents. However, even though ESMA might incur higher costs related to developing or choosing such a new IT tool as well as operating it, this IT tool will also create efficiencies and ESMA will benefit from those. These efficiencies relate to considerably less manual work in the reconciliation and sharing of documents, the following up on deadlines and questions as well as coordination with national competent authorities (NCAs), the college and the CCP Supervisory Committee. These benefits are likely to outweigh the costs incurred.

Furthermore, initial additional (paper-)work related to the modification of tools and procedures, as well as to enhanced cooperation, may increase costs at first, but these are likely to be reduced, or remain stable, over time. Notably, ESMA will be required to draft regulatory / implementing technical standards (RTS/ITS) on the format and content of the documents CCPs are required to submit to supervisory authorities when submitting an application, on standards for reporting on clearing activity and exposure to non-EU CCPs and the specification of the requirement for clearing members and clients to have an active account at a Union CCP, as well as a few reports, including the annual report on the results of their monitoring activity and cross-border activities and the bi-annual report on non-financial counterparties' clearing activities. In undertaking those activities, ESMA can build on already existing internal processes and procedures, and it may convert, where relevant, those procedures into RTSs/ITSs. In defining the active account requirement for some already identified instruments, and their ongoing monitoring, ESMA can take into account the work it has undertaken under Article 25(2c) of EMIR when assessing which Tier 2 CCPs' clearing services are of substantial systemic importance to the Union or one or more of its Member States and might therefore only require some very limited additional resources.

Another category to be considered in the cost analysis is the modification of procedures and tools to the new supervisory cooperation framework. The cooperation in joint supervisory teams and the establishment of a joint monitoring mechanism at EU level are new elements in the supervisory framework. However, they are mainly tools to improve the cooperation between authorities and cover tasks that are already, in all essential parts, performed by the authorities, except for the monitoring of the implementation of the requirements set out for active accounts at EU CCPs, such as fees for access charged by CCPs to clients for active accounts. These new structures will likely require some reorganisation of resources and potentially create the need for additional meetings but will not have substantial budgetary implications. Moreover, the recalibrated supervisory process also comes with benefits,

notably clearer responsibilities, avoiding unnecessary duplicative work and less work due to the introduction of non-objection procedures which enable ESMA and NCAs to focus on the material aspects of supervision in relation to the extension of central clearing services and changes to CCPs' risk models.

The proposed change clarifying that ESMA can withdraw the recognition of third-country CCPs that refuse to pay fees to ESMA will be positive in terms of costs. This avoids ESMA having to invest a considerable amount of work without getting remunerated for it.

In addition, further provisions are introduced which clarify and recalibrate the role of ESMA and are therefore to be considered budget neutral. For instance, ESMA already has the obligation to issue opinions before NCAs adopt certain decisions, however the content of those opinions is recalibrated to ensure a higher degree of efficiency in the supervisory process and ESMA is given a formal opportunity to issue an opinion on CCPs' annual review and evaluation as well as on the withdrawal of their authorisation and margin requirements. In addition, ESMA is to take a clear role in coordinating and providing recommendations in emergency situations. These are tasks that, in all material respects, relate to their already existing ongoing work and the provisions clarify and therefore strengthen ESMA's position, providing clear responsibilities.

Even though smaller changes to the role of other European Union bodies, such as the European Commission or the European Central Bank, are introduced, they will not have budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The measures aim at improving the attractiveness of EU CCPs and enhancing the supervision of cross-border risks in the EU. As such, several changes to EMIR are considered and, in some cases, amendments to other pieces of EU legislation. The proposal ensures that the relevant EU bodies can access the relevant information, while not giving rise to undue costs. The proposal includes a provision that an evaluation of EMIR in its entirety should be carried out, with a focus on its effectiveness and efficiency in meeting its original aims (i.e. improving the efficiency and safety of EU clearing markets and preserving financial stability). The evaluation should consider all aspects of EMIR, but especially improved attractiveness of EU CCPs. In principle, this evaluation should take place at least 5 years after the Regulation enters into and would seek to collect input from all relevant stakeholders.

- **Detailed explanation of the specific provisions of the proposal**

Detailed explanation of the specific provisions of the proposal

1. Intragroup transactions

EMIR provides for a framework exempting intragroup transactions (domestically and cross-border) from the clearing obligation under Article 4 and the margin requirements under Article 11 of that Regulation. In order to provide more legal certainty and predictability concerning the framework for intragroup decisions, the need for an equivalence decision is replaced by a list of jurisdictions for which an exemption cannot be granted. Article 3 should therefore be amended to replace the need for an equivalence decision with a list of third countries for which an exemption should not be granted and Article 13 should be deleted. These third countries should be those that are listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing,

in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council, and those listed in Annex I of the Union list of non-cooperative jurisdictions for tax purposes. The Commission is also empowered to adopt delegated acts to identify the third countries whose entities may not benefit from those exemptions despite not being identified in those lists, as being an entity from a third country identified in those lists is not necessarily the only factor that can influence risk, including counterparty risk or legal risk, associated with derivative contracts.

2. Clearing obligation

Article 4 is amended to introduce an exemption from the clearing obligation where an EU financial counterparty or a non-financial counterparty, subject to the clearing obligation under EMIR, enters into a transaction with a pension scheme arrangement established in a third country which is exempted from the clearing obligation under its national law.

3. Clearing obligation for financial counterparties

Article 4a is amended and as a result, when calculating the position towards the thresholds under Articles 4a of EMIR, only those derivative contracts that are not cleared at a CCP authorised under Article 14 or recognised under Article 25 of that Regulation should be included in that calculation.

4. Active account

A new Article 7a is introduced in order to address the risks associated with excessive exposures of EU clearing members and clients to third-country CCPs that provide clearing services identified as of substantial systemic importance by ESMA, and thereby ensure the integrity and stability of the EU financial system. This article requires financial counterparties and non-financial counterparties that are subject to the clearing obligation, to hold active accounts, directly or indirectly, at CCPs established in the EU, to clear at least a certain proportion of the services identified as of substantial systemic importance at EU CCPs, and to report on that. This requirement should lead to a reduction of excessive exposures in substantially systemic clearing services offered by the relevant Tier 2 CCPs, to the extent necessary to safeguard financial stability. ESMA, in cooperation with EBA, EIOPA and the ESRB and after consulting the ESCB, shall establish the details of the calibration of the activity to be maintained in these active accounts and the reporting requirements of transactions cleared at such active accounts. The Commission is empowered, where ESMA undertakes an assessment pursuant to Article 25(2c), to adopt a delegated act to amend the list of categories of derivative contracts which are subject to the active account requirement by adding or removing categories from that list.

5. Information on clearing services

A new Article 7b is introduced to require clearing members and clients that provide clearing services, to inform their clients about the possibility to clear a relevant contract at an EU CCP.

Article 7b also introduces an obligation for EU clearing members and EU clients to report to their competent authority the scope of clearing undertaken at non-EU CCPs. To ensure that the information to be submitted is specified and provided in a harmonised manner, ESMA is required to develop draft regulatory and implementing technical standards specifying the required information.

6. Reporting obligation

Article 9 is amended to remove the exemption from reporting requirements for transactions between counterparties within a group, where at least one of the counterparties is a non-financial counterparty, in order to ensure visibility on intra-group transactions.

7. Clearing obligation for non-financial counterparties

Article 10 is amended to require ESMA to review and clarify, where appropriate, the regulatory technical standards relating to the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks, the so-called hedging exemption, and the designation of thresholds in order to properly and accurately reflect the risks and characteristics in derivatives, and to consider whether the classes of OTC derivatives, namely interest rate, foreign exchange, credit and equity derivatives, are still the relevant classes. ESMA is encouraged to consider and provide, amongst others, more granularity for commodity derivatives.

Article 10 is also amended to require, when calculating the positions towards the thresholds, that only those derivative contracts that are not cleared at a CCP authorised under Article 14 or recognised under Article 25 should be included in that calculation.

8. Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP

Article 11 is amended to provide non-financial counterparties that become subject for the first time to the obligation to exchange collateral for OTC derivative contracts not cleared by a CCP, with an implementation period of 4 months in order to negotiate and test the arrangements to exchange collateral.

EBA may issue guidelines or recommendations to ensure a uniform application of the risk-management procedures in cooperation with the other ESAs.

9. Authorisation of a CCP and extension of activities and services

Articles 14 and 15 are amended to clarify that authorised CCPs should also be able to be authorised to provide clearing services and activities in non-financial instruments, in addition to their authorisation to provide clearing services and activities in financial instruments.

10. Authorisation of a CCP, extension of activities and services and procedure for granting and refusing authorisation

Articles 14, 15 and 17 are amended in order to ensure the relevant procedures for CCPs to expand their product offer are shorter, less complex and more certain in their outcome for EU CCPs. The competent authorities are required to swiftly acknowledge receipt of the application assessing whether the documents required for the authorisation or extension have been provided by the CCP. To ensure that EU CCPs submit all required documents with their applications, ESMA is required to develop draft regulatory and implementing technical standards specifying such documents, their format and content. In addition, the CCP should submit all documents to a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Furthermore, the CCP's competent authority, ESMA and the college, during a predefined assessment period, should interact with each other and ask the CCP questions to ensure a flexible and cooperative process.

11. Non-objection and ex-post procedures for granting a request fo extension of activities or services

A new Article 17a is introduced to provide CCPs with the possibility to undergo a non-objection procedure, instead of a regular procedure, for the authorisation of additional

services or activities a CCP intends to offer which do not increase the risks for the CCP. Article 17a states which additional services and activities are considered non-material and are therefore to be approved through such a non-objection procedure by that CCP's competent authority and for which the CCP may start to offer before the decision is received by the CCP's competent authority. Apart from these cases, a CCP may also ask its competent authority for the non-objection procedure to apply where it considers that the proposed additional service or activity would not increase its risks.

12. Procedure for seeking the opinion from ESMA and the college

A new Article 17b is introduced in order to clarify the scope and process to be followed where a competent authority seeks the opinion of ESMA and the college before adopting a supervisory decision for which the CCP does not submit an application, e.g. regarding a CCP's compliance with requirements on record-keeping or conflicts of interests.

13. College and opinion of the college

Articles 18 and 19 are amended to further foster a cooperative supervision of CCPs on an ongoing basis. The college is therefore requested to also issue an opinion where a competent authority considers withdrawing a CCP's authorisation as well as when a competent authority conducts the annual review and evaluation of that CCP. ESMA should manage and chair the college for each EU CCP and be granted the right to vote.

14. Withdrawal of authorisation

Article 20 is amended to require the competent authority to consult ESMA and the members of the college before the CCP's competent authority takes a decision to withdraw, or restrict the scope of, a particular service or activity , except where a decision is required urgently.

15. Annual review

Article 21 is amended to indicate that the annual review should consider the services or activities the CCP provides or the model changes the CCP uses based on a non-objection procedure. Also, the frequency of the report resulting from the review is further specified (the report should be delivered, at least, on a yearly basis on a given date). Moreover, it is specified that the report is subject to the opinion by ESMA and the college.

16. Supervisory cooperation between competent authorities and ESMA with regards to authorised CCPs and procedure for granting and refusing authorisation

Articles 17 and 23a are amended in order to enable ESMA to issue an opinion to the CCP's competent authority also in relation to a CCP's annual review and evaluation, margin requirements and the withdrawal of its authorisation. When issuing such an opinion, ESMA is to assess the CCP's compliance with the relevant EMIR requirements, focusing in particular on identified cross-border risks or risks to EU financial stability.

Moreover, ESMA should publish the fact that a competent authority does not comply or does not intend to comply with its opinion or the opinion of the college or with any conditions or recommendations included therein. ESMA can also publish the reasons for non-compliance provided by the competent authority.

Article 23a is amended to further specify the role of ESMA in strengthening the coordination in emergency situations and assessing risks, in particular on a cross-border basis.

17. Joint Supervisory Teams, non-objection procedures for granting a request of extension of activities or services and review and evaluation

A new Article 23b is introduced in order to increase the cooperation of the authorities involved in the supervision of authorised EU CCPs by establishing joint supervisory teams. The tasks of joint supervisory teams include: (i) to provide input to the CCP's competent authority within the context of the non-objection procedure for extending a CCP's existing authorisation, (ii) to assist in establishing the frequency and depth of a CCP's review and evaluation and (iii) to participate to on-site inspections.

18. Joint Monitoring Mechanism

A new Article 23c is introduced in order to establish a cross-sectoral monitoring mechanism bringing together Union bodies involved in the supervision of EU CCPs, clearing members and clients. ESMA, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, is to submit an annual report to the European Parliament, the Council and the Commission on the results of the monitoring activity in order to inform future policy decisions. ESMA may also issue guidelines or recommendations if it considers that competent authorities fail to ensure clearing members' and clients' compliance with the active account requirement or it identifies a risk to the EU financial stability.

19. Emergency situation

Article 24 is amended to further enhance the role of ESMA in an emergency situation by enabling ESMA to convene meetings of the CCP Supervisory Committee, either on its own initiative or upon request, potentially with an enlarged composition, to coordinate effectively competent authorities' responses. ESMA is also empowered to ask, by simple request, information from market participants in order to perform its coordination function in these cases. ESMA may also issue recommendations directed to the CCP's competent authorities.

20. CCP Supervisory Committee

Article 24a is amended in order for ESMA to map and identify the supervisory priorities, to consider cross-border risks including interconnections, interlinkages and concentration risks. In addition, Article 24a is amended to allow central banks of issue to attend all meetings of the CCP Supervisory Committee for EU CCPs and for the relevant authorities for clients and EU bodies to be invited, where appropriate.

21. Recognition of a third-country CCP

Article 25 is amended to clarify that where ESMA undertakes a review of a third-country CCP's recognition, that CCP should not be obliged to submit a new application but should provide ESMA with all information necessary for such review.

Article 25 is amended to introduce the possibility for the Commission, where in the interests of the Union, to take a proportionate approach and waive the requirement for a third country to have an effective equivalent system for the recognition of third-country CCPs when adopting an equivalence decision for that third-country.

To ensure that cooperation arrangements are proportionate, ESMA should tailor them to different jurisdictions based on the CCP(s) established in the respective jurisdiction. For Tier 2 CCPs the cooperation arrangements should cover a broader range of information to be exchanged between ESMA and the relevant third-country authorities and with an increased frequency.

Article 25 is further amended in order for cooperation arrangements to include the right for ESMA to also be informed where a Tier 2 CCP is required to enhance its preparedness in financial distress, by, for example, establishing a recovery plan or where an authority in such a third country establishes resolution plans. ESMA is also to be informed of the aspects relevant for the financial stability of the EU in relation to emerging crisis.

22. Ongoing compliance with the conditions for recognition

Article 25b is amended to clarify that Tier 2 CCPs are to provide ESMA with information on a regular basis.

23. Withdrawing of recognition and public notice

Article 25p and 25r are amended to clarify that ESMA can withdraw the recognition where a non-EU CCP infringes any of the requirements under EMIR and can issue a public notice where fees are not paid or where a CCP has not taken a remedial action requested by ESMA.

24. Information to competent authorities

Article 31 on the notification on changes to the management of a CCP is amended to clarify the procedure in relation to the sharing of information and issuing ESMA and college opinions.

25. ESMA and college opinions

Articles 32, 35, 41 and 54 are amended to clarify the requests for ESMA and college opinions.

26. Participation requirements and general provisions regarding organisational requirements

Articles 26 and 37 are amended to clarify that CCPs should not be allowed to be clearing members of other CCPs nor accept to have other CCPs or clearinghouses as clearing members or indirect clearing members.

27. Participation requirements

Article 37 is amended to set out that where a CCP has on-boarded or intends to on-board non-financial counterparties as clearing members, that CCP should ensure that certain additional requirements on margin requirements and default funds are met. Non-financial counterparties should not be permitted to offer client clearing services and only be allowed to keep accounts at the CCP for assets and positions held for their own account. The competent authority for the CCP should report to ESMA and the college on a regular basis on the appropriateness of accepting non-financial counterparties as clearing members. ESMA is mandated to prepare a draft RTS on the elements to be considered when determining the access criteria and might issue an opinion on the appropriateness of such arrangements following an ad-hoc peer review.

28. Transparency

Article 38 is amended in order to ensure that clients and indirect clients have better visibility and predictability of margin calls. Clearing members and clients providing clearing services should ensure transparency towards their clients.

29. Margin requirements

Article 41 is amended to ensure that CCPs continuously revise the level of their margins while taking into account any potentially procyclical effects of such revisions, reflecting current market conditions and considering the potential impact of their intraday margin collections and payments on the liquidity position of their participants.

30. Liquidity risk controls

Article 44 is amended to better reflect the entities whose default could materially affect a CCP's liquidity position by requiring a CCP to take into account the liquidity risk generated by the default of at least two entities, including clearing members and liquidity service providers

31. Collateral requirements

Article 46 is amended to allow bank guarantees and public guarantees to be considered eligible as highly liquid collateral provided that they are unconditionally available upon request within the liquidation period and making sure a CCP takes them into account when calculating its overall exposure to the bank. Furthermore, a CCP should take into account any potential procyclical effects when revising the level of the haircuts it applies to the assets it accepts as collateral.

32. Review of models, stress testing and back testing

Article 49 is amended in order to ensure the relevant procedures for CCPs to apply model changes are shorter, less complex and more certain in their outcome. The competent authorities are required to swiftly acknowledge receipt of the application for the model change by assessing whether the documents required have been provided by the CCP. To ensure that EU CCPs submit all required documents with their applications, ESMA is required to develop draft regulatory and implementing technical standards specifying such documents, their format and content. In addition, the CCP should submit all documents to a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Article 49 also introduces the possibility to undergo a non-objection procedure, instead of a regular procedure, for the validation of model changes considered not significant and specifies which changes are considered significant. Where a CCP considers the change as non-significant it may start to use the model change before the decision is received by the CCP's competent authority.

33. Amendments to the Reports and Review

Article 85 is amended to require the Commission to submit by [5 years after the entry into force of this Regulation] a report assessing the application of this Regulation. The Commission is required to submit that report to the European Parliament and to the Council, together with any appropriate proposals. In addition, the current requirement to deliver a report by 2 January 2023 is removed. ESMA is also required to submit a report by [3 years after the entry into force of this Regulation] on its staffing and resources.

34. Amendments to the Capital Requirements Regulation (CRR)

Article 382(4) of the CRR[22] is amended in order to align relevant provisions in the CRR with the changes suggested in this proposal. The amendment adjusts the scope of the own funds requirement for credit valuation adjustment risk, notably by clarifying which intragroup transactions can be excluded from that requirement.

35. Amendments to the Money Market Funds Regulation (MMFR)

Article 17 of the MMFR[23] is amended regarding the provisions on investment policy regarding counterparty risk limits. It excludes centrally cleared derivative transactions from the counterparty risk limits set out in Article 17(4) and 17(6)(c) of the MMFR. Furthermore, a definition of a CCP is added in Article 2, specifically as a new point (24).

[22] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance; OJ L 176, 27.6.2013, p. 1–337.

[23] Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (Text with EEA relevance.); OJ L 169, 30.6.2017, p. 8–45.

2022/0403 (COD)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[24],

Having regard to the opinion of the European Economic and Social Committee[25],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) No 648/2012 of the European Parliament and of the Council[26] contributes to the reduction of systemic risk by increasing the transparency of over-the-counter (OTC) derivatives market and by reducing the counterparty credit and operational risks associated with OTC derivatives.

(2) Post-trade infrastructures are a fundamental aspect of the Capital Markets Union and are responsible for a range of post-trade processes, including clearing. An efficient and competitive clearing system in the Union is essential for the functioning of Union capital markets and is a cornerstone of the Union's financial stability. It is therefore necessary to lay down further rules to improve the efficiency of clearing services in the Union in general, and of central counterparties (CCPs) in particular, by streamlining procedures, especially for the provision of additional services or activities and for changing CCPs' risk models, by increasing liquidity, by encouraging clearing at Union CCPs, by modernising the framework under which CCPs operate, and by providing the necessary flexibility to CCPs and other financial actors to compete within the single market.

(3) To attract business, CCPs must be safe and resilient. Regulation (EU) No 648/2012 lays down measures to increase the transparency of derivatives markets and mitigate

[24] […]

[25] […]

[26] 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).

risks through clearing and the exchange of margin. In that respect, CCPs play an important role in mitigating financial risks. Rules should therefore be laid down to further enhance the stability of Union CCPs, notably by amending certain aspects of the regulatory framework. In addition, and in recognition of Union CCPs' role in preserving the Union's financial stability, it is necessary to strengthen further their supervision, with particular attention to their role within the broader financial system and the fact they provide services across borders.

(4) Central clearing is a global business and Union market participants are active internationally. However, since the Commission adopted the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs in 2017[27], concerns have been expressed repeatedly, including by the European Securities and Markets Authority (ESMA)[28], about the ongoing risks to the Union financial stability arising from the excessive concentration of clearing in some third-country CCPs, in particular due to the potential risks that can arise in a stress scenario. In the short-term, to mitigate the risk of cliff edge effects related to the withdrawal of the UK from the Union due to an abrupt disruption of Union market participants' access to UK CCPs, the Commission adopted a series of equivalence decisions to maintain access to UK CCPs. However, the Commission called on Union market participants to reduce their excessive exposures to systemic CCPs outside the Union in the medium term. The Commission reiterated that call in its communication "The European economic and financial system: fostering openness, strength and resilience"[29] in January 2021. The risks and effects of excessive exposures to systemic CCPs outside the Union were considered in the report published by ESMA in December 2021[30] following an assessment conducted in accordance with Article 25(2c) of Regulation (EU) No 648/2012. That report concluded that some services provided by those systemically important UK CCPs were of such substantial systemic importance that the current arrangements under Regulation (EU) No 648/2012 were insufficient to manage the risks to the Union financial stability. To mitigate the potential financial stability risks to the Union due to the continued excessive reliance on systemic third-country CCPs, but also to enhance the proportionality of measures for those third-country CCPs that present less risks for the financial stability of the Union, it is necessary to further tailor the framework introduced by Regulation (EU) 2019/2099 to the risks presented by different third-country CCPs.

(5) Article 4(2) and Article 11(5) to (10) of Regulation (EU) No 648/2012 exempt intragroup transactions from the clearing obligation and the margin requirements. To provide more legal certainty and predictability concerning the framework for

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27 COM(2017)331.

28 ESMA Report "Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd", 16 December 2021, ESMA91-372-1945.

29 Communication from the Commission of 19 January 2021 to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: "The European economic and financial system: fostering openness, strength and resilience" (COM(2021) 32 final).

30 ESMA Report "Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd", 16 December 2021, ESMA91-372-1945.

intragroup transactions, the equivalence decisions in Article 13 of that Regulation should be replaced by a simpler framework. Article 3 of that Regulation should therefore be amended to replace the need for an equivalence decision with a list of third countries for which an exemption should not be granted. Consequently, Article 13 of that Regulation should be deleted. Since Article 382 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[31] refers to intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012, that Article 382 should also be amended accordingly.

(6) Given the fact that entities that are established in countries that are listed as high-risk third countries that have strategic deficiencies in their regime on anti-money laundering and counter terrorist financing, as referred to in Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[32], or in third countries that are listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[33] are subject to a less stringent regulatory environment, their operations may increase the risk, including due to increased counterparty credit risk and legal risk, for the Union financial stability. Consequently, such entities should not be eligible to be considered in the framework of intragroup transactions.

(7) Strategic deficiencies in the regime on anti-money laundering and counter terrorist financing, or lack of cooperation for tax purposes are not necessarily the only factors that can influence risk, including counterparty credit risk and legal risk, associated with derivative contracts. Other factors, such as the supervisory framework, also play a role. The Commission should therefore be empowered to adopt delegated acts to identify the third countries whose entities may not benefit from those exemptions despite not being identified in those lists. Considering that intragroup transactions benefit from reduced regulatory requirements, regulators and supervisors should carefully monitor and assess the risks associated with transactions involving entities from third countries.

(8) To ensure a level playing field between Union and third-country credit institutions offering clearing services to pension scheme arrangements, an exemption from the clearing obligation under Article 4, point (iv), of Regulation (EU) No 648/2012 should be introduced where a Union financial counterparty or a non-financial counterparty that is subject to the clearing obligation enters into a transaction with a pension scheme arrangement established in a third country which is exempted from the clearing obligation under that third country's national law.

(9) Regulation (EU) No 648/2012 promotes the use of central clearing as the main risk-mitigation technique for OTC derivatives. The risks associated with an OTC derivative contract are therefore best mitigated when that derivative contract is cleared by a CCP

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31 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

32 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

33 Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 413 I, 12.10.2021, p. 1).

authorised under Article 14 or recognised under Article 25 of that Regulation. It follows that in the calculation of the position that is compared to the thresholds specified pursuant to Article 10(4), point (b), of Regulation (EU) No 648/2012, only those derivative contracts that are not cleared by a CCP authorised under Article 14 or recognised under Article 25 of that Regulation should be includedin that calculation.

(10) It is necessary to address the financial stability risks associated with excessive exposures of Union clearing members and clients to systemically important third-country CCPs (Tier 2 CCPs) that provide clearing services that have been identified by ESMA as clearing services of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. In December 2021, ESMA concluded that the provision of certain clearing services provided by two Tier 2 CCPs, namely for interest rate derivatives denominated in euro and Polish zloty, Credit Default Swaps (CDS) denominated in euro and Short-Term Interest Rate Derivatives (STIR) denominated in euro, are of substantial systemic importance for the Union or one or more of its Member States. As noted by ESMA in its December 2021 assessment report, were those Tier 2 CCPs to face financial distress, changes to those CCPs' eligible collateral, margins or haircuts may negatively impact the sovereign bond markets of one or more Member States, and more broadly the Union financial stability. Furthermore, disruptions in markets relevant for monetary policy implementation may hamper the transmission mechanism critical to central banks of issue. It is therefore appropriate to require any financial counterparties and non-financial counterparties that are subject to the clearing obligation to hold, directly or indirectly, accounts with a minimum level of activity at CCPs established in the Union. That requirement should reduce the provision of those clearing services by those Tier 2 CCPs to a level where such clearing is no longer of substantial systemic importance.

(11) It is necessary to ensure that the calibration of the level of the clearing activity to be maintained in accounts at Union CCPs can be adapted to changing circumstances. ESMA has an important role in the assessment of the substantial systemic importance of third-country CCPs and their clearing services. ESMA, in cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the ESRB, and after having consulted the European System of Central Banks (ESCB), should therefore develop draft regulatory technical standards specifying the details of the level of substantially systemic clearing services to be maintained in the active accounts in Union CCPs by financial and non-financial counterparties subject to the clearing obligation. Such calibration should not go beyond what is necessary and proportionate to reduce clearing in the identified clearing services at Tier 2 CCPs concerned. In that regard, ESMA should consider the costs, risks and the burden such calibration entails for financial and non-financial counterparties, the impact on their competitiveness, and the risk that those costs are passed on to non-financial firms. Furthermore, ESMA should also ensure that the envisaged reduction in clearing in those instruments, identified as of substantial systemic importance, results in them no longer being considered of substantial systemic importance when ESMA reviews the recognition of the relevant CCPs which according to Article 25(5) of that Regulation and where such a review should be done at least every five years. In addition, suitable phase-in periods for the progressive implementation of the requirement to hold a certain level of the clearing activity in the accounts at Union CCPs should be foreseen.

(12) To ensure that clients are aware of their options and can take an informed decision as where to clear their derivative contracts, clearing members and clients that provide clearing services in both Union and recognised third-country CCPs should inform their clients about the option to clear a derivative contract in a Union CCP so that clearing in those services identified as of substantial systemic importance is reduced in Tier 2 CCPs in order to ensure the financial stability of the Union.

(13) To ensure that competent authorities have the necessary information on the clearing activities undertaken by clearing members or clients in recognised CCPs, a reporting obligation should be introduced for such clearing members or clients. The information to be reported should distinguish between securities transactions, derivative transactions traded on a regulated market and over-the-counter (OTC) derivatives transactions.

(14) Regulation (EU) 2019/834 of the European Parliament and of the Council[34] amended Regulation (EU) No 648/2012 to introduce, *inter alia*, an exemption from reporting requirements for OTC derivative transactions between counterparties within a group, where at least one of the counterparties is a non-financial counterparty. That exemption has been introduced because intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. As such, those transactions do not significantly contribute to systemic risk and interconnectedness with the rest of the financial system. The exemption for those transactions from reporting requirements has, however, limited the ability of ESMA, the ESRB and other authorities to clearly identify and assess the risks taken by non-financial counterparties. To ensure more visibility on intragroup transactions, considering their potential interconnectedness with the rest of the financial system and taking into account recent market developments, in particular strains on energy markets as a result of Russia's unprovoked and unjustified aggression against Ukraine, that exemption should be removed.

(15) To ensure that competent authorities are at all times aware of exposures at entity and group level and are able to monitor such exposures, competent authorities should establish effective cooperation procedures to calculate the positions in contracts not cleared at an authorised or recognised CCP andto actively evaluate and assess the level of exposure in OTC derivative contracts at entity and group level.

(16) It is necessary to ensure that 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[35] relating to the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks continues to be appropriate in light of market developments. It is also necessary to ensure that the

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[34] Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).

[35] 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 (OJ L 52, 23.2.2013, p.11).

clearing thresholds laid down in that Commission Delegated Regulation relating to values of those thresholds properly and accurately reflect the different risks and characteristics in derivatives, other than interest rate, foreign exchange, credit and equity derivatives. ESMA should therefore also review and clarify, where appropriate, that Commission Delegated Regulation and propose amending it if necessary. ESMA is encouraged to consider and provide, *inter alia*, more granularity for commodity derivatives. That granularity could be achieved by separating the clearing thresholds by sector and type, such as differentiating between agriculture, energy or metal related commodities or differentiating those commodities based on other features such as environmental, social and governance criteria, environmentally sustainable investments or crypto-related features. During the review, ESMA should endeavour to consult relevant stakeholders that have specific knowledge on particular commodities.

(17) Non-financial counterparties that have to exchange collateral for OTC derivative contracts not cleared by a CCP should have sufficient time to negotiate and test the arrangements to exchange such collateral.

(18) To ensure a uniform application of the risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts entered into by financial counterparties and non-financial counterparties, the European Supervisory Authorities (ESAs) should take the necessary actions to ensure such uniform application.

(19) To ensure a consistent and convergent approach amongst competent authorities throughout the Union, authorised CCPs or legal persons that wish to be authorised under Article 14 of Regulation (EU) No 648/2012 to provide clearing services and activities in financial instruments should also be able to be authorised to provide clearing services and other activities in relation to non-financial instruments. Regulation (EU) No 648/2012 applies to CCPs as entities, and not to specific services, as set out in Article 1(2) of that Regulation. When a CCP clears non-financial instruments, in addition to financial instruments, the CCP's competent authority should be able to ensure that the CCP complies with all requirements of Regulation (EU) No 648/2012 for all services it offers.

(20) Union CCPs face challenges in expanding their product offer and experience difficulties in bringing new products to the market. Those challenges and difficulties can be explained by certain provisions of Regulation (EU) No 648/2012 that render some authorisation procedures too long, complex and uncertain in their outcome. The process of authorising Union CCPs or extending their authorisation should therefore be simplified, while ensuring the appropriate involvement of ESMA and the college referred to in Article 18 of Regulation (EU) No 648/2012. First, to avoid significant, and potentially indefinite, delays when competent authorities assess the completeness of an application for an authorisation, the competent authority should swiftly acknowledge receipt of that application and quickly verify whether the CCP has provided the documents required for the assessment. To ensure that Union CCPs submit all required documents with their applications, ESMA should develop draft regulatory and implementing technical standards specifying which documents should be provided, what information those documents should contain and in which format they should be submitted. Second, to ensure an efficient and concurrent assessment of applications, CCPs should be able to submit all documents via a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Third, a CCP's competent authority, ESMA and the college should, during the assessment period, engage and ask the CCP any questions to ensure

a swift, flexible, and cooperative process for a comprehensive review. To avoid duplication and unnecessary delays, all questions and subsequent clarifications should also be shared simultaneously between the CCP's competent authority, ESMA and the college.

(21) There is currently uncertainty as to when an additional service or activity is covered by a CCP's existing authorisation. It is necessary to address that uncertainty and to ensure proportionality when the proposed additional service or activity does not increase the risks for the CCP. It is therefore necessary to lay down that applications in those cases should not undergo the full assessment procedure. For that reason, it should be specified which additional clearing services and activities are non-material, and thus do not increase the risks for a Union CCP, and should be approved through a non-objection procedure by that CCP's competent authority. That non-objection procedure should be applied where the CCP intends to clear one or more financial instruments belonging to the same classes of financial instruments for which it has been authorised to clear, provided such financial instruments are traded on a trading venue for which the CCP already provides clearing services or performs activities and the proposed additional clearing service or activity does not involve a payment in a new currency. That non-objection procedure should also be applied where the CCP adds a new Union currency in a class of financial instruments already covered by the CCP's authorisation, or where the CCP adds one or more additional tenors to a class of financial instruments already covered by the CCP's authorisation provided that the maturity range is not significantly extended. In addition, a CCP should also be able to ask its competent authority for the non-objection procedure to apply where that CCP considers that the proposed additional service or activity would not increase its risks, in particular where the new clearing service or activity is similar to the services the CCP is already authorised to provide. The non-objection procedure should not require a separate opinion from ESMA and the college since such requirement would be disproportionate. Instead, ESMA and the college should be able to provide input to the CCP's competent authority through the joint supervisory team established for that CCP.

(22) To foster a cooperative supervision of CCPs on an ongoing basis, the college should issue an opinion where a competent authority considers withdrawing a CCP's authorisation and when a competent authority conducts the annual review and evaluation of that CCP.

(23) To ensure the consistent functioning of all colleges and to further enhance supervisory convergence, ESMA should manage and chair the college for each Union CCP and should be granted the right to vote in that college.

(24) ESMA should be able to contribute more effectively to ensuring that Union CCPs are safe, robust and competitive in providing their services throughout the Union. Therefore, ESMA should, in addition to the supervisory competences currently laid down in Regulation (EU) No 648/2012, also issue an opinion to the CCP's competent authority about a CCP's annual review and evaluation, the withdrawal of its authorisation and margin requirements. When issuing an opinion, ESMA should assess a CCP's compliance with the applicable requirements, focusing in particular on identified cross-border risks or risks to the financial stability of the Union. It is also necessary to further enhance supervisory convergence and to ensure that all stakeholders are informed of ESMA's and the college's assessment of a CCP's activities. ESMA should therefore disclose, taking into account the need to protect confidential information, the fact that a competent authority does not comply or does

not intend to comply with its opinion or the opinion of the college and any conditions or recommendations included therein. ESMA should be able to decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with the ESMA opinion or the college opinion or any conditions or recommendations contained therein.

(25) It is necessary to ensure that the CCP complies with Regulation (EU) No 648/2012 on an ongoing basis, including after a non-objection procedure approving the provision of additional clearing services or activities, or after a non-objection procedure for the validation of a model change in which cases ESMA and the college do not issue a separate opinion. The review conducted by the competent authority of the CCP at least on an annual basis should therefore in particular consider such new clearing services or activities and any model changes. To ensure supervisory convergence and that Union CCPs are safe, robust and competitive in providing their services throughout the Union, the report of the competent authority should be subject to an opinion by ESMA and the college and should be submitted every year.

(26) ESMA should have the means to identify potential risks to the Union's financial stability. ESMA should therefore, in cooperation with the EBA, EIOPA, and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013[36], identify the interconnections and interdependencies between different CCPs and legal persons, including shared clearing members, clients and indirect clients, shared material service providers, shared material liquidity providers, cross-collateral arrangements, cross-default provisions and cross-CCP netting, cross-guarantee agreements and risks transfers and back-to-back trading arrangements.

(27) The central banks of issue of the Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee are non-voting members of that committee. They only participate to its meetings for Union CCPs in the context of discussions about the Union-wide assessments of the resilience of those CCPs to adverse market developments and relevant market developments. Contrary to their involvement in the supervision of third-country CCPs, central banks of issue are thus insufficiently involved on supervisory matters for Union CCPs that are of direct relevance to the conduct of monetary policy and the smooth operation of payments systems, which leads to insufficient consideration of cross-border risks. It is therefore appropriate that those central banks of issue are able to attend as non-voting members all meetings of the CCP Supervisory Committee when it convenes for Union CCPs.

(28) It is necessary to ensure a prompt exchange of information, knowledge sharing and effective cooperation between the authorities involved in the supervision of authorised CCPs, and in particular where a swift decision by a CCP's competent authority is required. It is therefore appropriate to set up a joint supervisory team for each Union CCP to assist those supervisory authorities, including by providing input to the CCP's competent authority within the context of the non-objection procedure for extending a CCP's existing authorisation, assisting in establishing the frequency and depth of a CCP's review and evaluation, and participating to on-site inspections. Considering that a CCP's competent authority remains ultimately responsible for the final supervisory

[36] […]

decisions, the joint supervisory teams should work under the auspices of the CCP's competent authority for which the team is established and should be composed of staff members from the CCP's competent authority, ESMA and certain members of the college. Other members of the college should also be able to request to participate justifying the request based on their assessment of the impact that the CCP's financial distress could have on the financial stability of their respective Member State.

(29) To enhance the ability of relevant Union bodies to have a comprehensive overview of market developments relevant for clearing in the Union, monitor the implementation of certain clearing related requirements of Regulation (EU) No 648/2012 and collectively discuss the potential risks arising from the interconnectedness of different financial actors and other issues related to the financial stability it is necessary to establish a cross-sectoral monitoring mechanism bringing together the relevant Union bodies involved in the supervision of Union CCPs, clearing members and clients. Such Joint Monitoring Mechanism should be managed and chaired by ESMA as the Union authority involved in the supervision of Union CCPs and supervising systemically important third-country CCPs. Other participants should include representatives from the Commission, the EBA, EIOPA, the ESRB, the ECB and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013.

(30) To inform future policy decisions, ESMA, in cooperation with the other bodies participating in the Joint Monitoring Mechanism, should submit an annual report to the European Parliament, the Council and the Commission on the results of their activities. ESMA might institute a breach of Union law procedure pursuant to Article 17 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[37],where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA considers that competent authorities fail to ensure clearing members' and clients' compliance with the requirement to clear at least a proportion of identified contracts at accounts at Union CCPs, or where ESMA identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law. Before instituting such breach of Union law procedure, ESMA might issue guidelines and recommendations pursuant to Article 16 of that Regulation. Where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA considers that compliance with the requirement to clear at least a proportion of identified contracts at accounts at Union CCPs does not effectively ensure the reduction of Union clearing members' and clients' excessive exposure to Tier 2 CCPs, it should review and propose amending the relevant Commission Delegated Regulation specifying further that requirement, proposing to set, where necessary, an appropriate adaptation period.

(31) The 2020 market turmoil as a result of the Covid-19 pandemic and the 2022 high prices on energy wholesale markets following Russia's unprovoked and unjustified aggression against Ukraine showed that, while it is essential for competent authorities to cooperate and exchange information to address ensuing risks when events with

[37] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

cross-border impacts emerge, ESMA still lacks the necessary tools to ensure such coordination and a convergent approach at Union level. ESMA should therefore be able to convene meetings of the CCP Supervisory Committee, either on its own initiative or upon request, potentially with an enlarged composition, to coordinate effectively competent authorities' responses in emergency situations. ESMA should also be able to ask, by simple request, information from market participants which is necessary for ESMA to perform its coordination function in those situations and to be able to issue recommendations to the competent authority.

(32) To reduce the burden on CCPs and ESMA, it should be clarified that where ESMA undertakes a review of a third-country CCP's recognition pursuant to Article 25(5), first subparagraph, point (b), that third-country CCP should not be obliged to submit a new application for recognition. It should, however, provide ESMA with all information necessary for such review. Consequently, ESMA's review of a third-country CCP's recognition should not constitute a new recognition of that CCP.

(33) The Commission should be able, when adopting an equivalence decision, to waive the requirement for that third country to have an effective equivalent system for the recognition of third-country CCPs. In considering where such an approach would be proportionate, the Commission might consider a range of different factors, including compliance with the Principles for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures and the International Organisation of Securities Commissions, the size of the third-country CCPs established in that jurisdiction and, where known, the expected activity in these third-country CCPs by clearing members and trading venues established in the Union.

(34) To ensure that cooperation arrangements between ESMA and the relevant competent authorities of third countries are proportionate, such arrangements should reflect the specific features of the scope of services provided, or intended to be provided, within the Union by CCPs authorised in that third-country and whether those services entail specific risks to the Union or to one or more of its Member States. The cooperation arrangements should therefore reflect the degree of risk that the CCPs established in a third country potentially present to the financial stability of the Union or of one or more of its Member States.

(35) ESMA should therefore tailor its cooperation arrangements to different third-country jurisdictions based on the CCPs established in the respective jurisdiction. In particular, Tier 1 CCPs cover a wide range of CCP profiles hence ESMA should ensure that a cooperation arrangement is proportionate to the CCPs established in each third-country jurisdiction. ESMA should consider, amongst others, the liquidity of the markets concerned, the degree to which the CCPs' clearing activities are denominated in euro or other Union currencies and the extent to which Union entities use the services of such CCPs. Considering that the vast majority of Tier 1 CCPs provide clearing services to a limited extent to clearing members and trading venues established in the Union, ESMA's scope of assessment and information to be requested should also be limited in all those jurisdictions. To limit information requests for Tier 1 CCPs, a pre-defined range of information should in principle be requested by ESMA annually. Where the risks from a Tier 1 CCP or jurisdiction are potentially greater, more, and at least quarterly, requests and a wider scope of information requested would be justified. However, any cooperation arrangements in place when this Regulation enters into force should not be required to be adjusted unless the relevant third-country authorities so request.

(36) Where recognition is provided under Article 25(2b) of Regulation (EU) No 648/2012, considering that those CCPs are of systemic importance for the Union or one or more of its Member States, the cooperation arrangements between ESMA and the relevant third-country authorities should cover the exchange of information for a broader range of information and with increased frequency. In that case, the cooperation arrangements should also entail procedures to ensure such a Tier 2 CCP is supervised pursuant to Article 25 of that Regulation. ESMA should ensure it can obtain all information necessary to fulfil its duties under that Regulation, including information necessary to ensure compliance with Article 25(2b) of that Regulation and to ensure that information is shared where a CCP has been granted, partially or fully, comparable compliance. To enable ESMA to carry out full and effective supervision of Tier 2 CCPs, it should be clarified that those CCPs should provide ESMA with information periodically.

(37) To ensure that ESMA is also informed about how a Tier 2 CCP is prepared for, can mitigate and recover from financial distress, the cooperation arrangements should include the right for ESMA to be informed where a Tier 2 CCP establishes a recovery plan or where a third-country authority establishes resolution plans. ESMA should also be informed on the aspects relevant for the financial stability of the Union, or of one or more of its Member States, and on how individual clearing members, and to the extent known clients and indirect clients, could be materially affected by the implementation of such a recovery or resolution plan. The cooperation arrangements should also indicate that ESMA should be informed when a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of the CCP, its clearing members, clients and indirect clients.

(38) To mitigate potential risks for the financial stability of the Union, or of one or more of its Member States, CCPs and clearing houses should not be allowed to be clearing members of other CCPs nor should CCPs be able to accept to have other CCPs as clearing members or indirect clearing members.

(39) The recent events on commodity markets as a result of Russia’s unprovoked and unjustified aggression against Ukraine illustrate the fact that non-financial counterparties do not have the same access to liquidity as financial counterparties. Therefore, non-financial counterparties should not be allowed to offer client clearing services and should be only allowed to keep accounts at the CCP for assets and positions held for their own account. Where a CCP has or intends to accept non-financial counterparties as clearing members that CCP should ensure that the non-financial counterparties can fulfil the margin requirements and default funds contributions, including in stressed conditions. Considering non-financial counterparties are not subject to the same prudential requirements and liquidity safeguards as financial counterparties, their direct access to CCPs should be monitored by the competent authorities of CCPs accepting them as clearing members. . The competent authority for the CCP should report to ESMA and the college on a regular basis on the appropriateness of accepting non-financial counterparties as clearing members. ESMA might issue an opinion on the appropriateness of such arrangements following an ad-hoc peer review.

(40) To ensure clients and indirect clients have better visibility and predictability of margin calls, and thus further develop their liquidity management strategies, clearing members and clients providing clearing services should ensure transparency towards their clients. Due to their closer relationship with CCPs and their professional experience

with central clearing and liquidity management, clearing members are best placed to communicate in a clear and transparent manner to clients how CCP models work, including in stress events, and the implications such events can have on the margins clients are requested to post, including any additional margin clearing members themselves may ask. A better understanding of CCP margin models can improve clients' ability to reasonably predict margin calls and prepare themselves for collateral requests, particularly in stress events.

(41) To ensure that margin models reflect current market conditions, CCPs should continuously and not only regularly revise the level of their margins taking into account any potentially procyclical effects of such revisions. When calling and collecting margins on an intraday basis, CCPs should further consider the potential impact of their intraday margin collections and payments on the liquidity position of their participants.

(42) To ensure the liquidity risk is accurately defined, the entities whose default a CCP should take into account to determine such risk should be expanded to cover not only the default of clearing members but also of liquidity service providers, settlement service providers or any other service providers.

(43) To facilitate access to clearing to those entities that do not hold sufficient amounts of highly liquid assets and in particular energy companies, under conditions to be specified by ESMA and to ensure a CCP takes those conditions into account when calculating its overall exposure to a bank that is also a clearing member, commercial bank and public bank guarantees should be considered eligible collateral. In addition, given their low credit risk profile, it should be explicitly specified that public guarantees are also eligible as collateral. Finally, a CCP should, when revising the level of the haircuts it applies to the assets it accepts as collateral, take into account any potential procyclical effects of such revisions.

(44) To facilitate CCPs' ability to respond promptly to market developments that may require amendments to their risk models, the process of the validation of changes to such models should be simplified. Where a change is non-significant, a non-objection validation procedure should apply. To ensure supervisory convergence, Regulation (EU) No 648/2012 should specify the changes that should be considered as significant. This should be the case where certain conditions would be met referring to different aspects of the CCP's financial position and overall risk level.

(45) Regulation (EU) No 648/2012 should be reviewed no later than 5 years after the date of entry into force of this Regulation. This should allow time to apply the changes introduced by this Regulation. Whilst a review of Regulation (EU) No 648/2012 in its entirety should be carried out, that review should focus on the effectiveness and efficiency of that Regulation in meeting its aims, improving the efficiency and safety of Union clearing markets and preserving financial stability of the Union. The review should also consider the attractiveness of Union CCPs, the impact of this Regulation on encouraging clearing in the Union, and the extent to which the enhanced assessment and management of cross-border risks have benefited the Union.

(46) To ensure consistency of Regulation (EU) 2017/1131 of the European Parliament and of the Council[38] with Regulation (EU) No 648/2012 and to preserve the integrity and

[38] Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

stability of the internal market, it is necessary to lay down in Regulation (EU) 2017/1131 a uniform set of rules to address counterparty risk in financial derivative transactions performed by money market funds (MMF), when the transactions have been cleared by a CCP that is authorised or recognised under Regulation (EU) No 648/2012. As central clearing arrangements mitigate counterparty risk that is inherent in financial derivative contracts, it is necessary to take into consideration whether a derivative has been centrally cleared by a CCP that is authorised or recognised under that Regulation, when determining the applicable counterparty risk limits. It is also necessary for regulatory and harmonisation purposes, to lift counterparty risk limits only where the counterparties use CCPs which are authorised or recognised in accordance with that Regulation, to provide clearing services to clearing members and their clients.

(47) To ensure consistent harmonisation of rules and supervisory practice on applications for authorisation, extension of authorisation and model validations the active account requirement and the CCP participation requirements, the Commission should be empowered to adopt regulatory technical standards developed by ESMA with regard to the following: the documents CCPs are required to submit when applying for authorisation, extension of authorisation and validation of model changes; the proportion of activity in the relevant derivative contracts that should be held in active accounts at Union CCPs and the calculation methodology to be used to calculate that proportion; the scope and details of the reporting by Union clearing members and clients to their competent authorities on their clearing activity in third-country CCPs and whilst providing the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives to also review the scope of the hedging exemption and thresholds for the clearing obligation to apply; and the elements to be considered when laying down the admission criteria to a CCP. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(48) To ensure uniform conditions for the implementation of this Regulation, the Commission should also be empowered to adopt implementing technical standards developed by ESMA with regard to the format of the required documents for applications and the format of the reporting by Union clearing members and clients to their competent authorities on their clearing activity in third-country CCPs. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

(49) To ensure the list of third countries whose entities may not benefit from those exemptions despite not being identified in those lists is relevant for the objectives of Regulation (EU) No 648/2012, to ensure the consistent harmonisation of the obligation to clear certain transactions in an account with an authorised CCP where ESMA undertakes an assessment pursuant to Article 25(2c) and to ensure the list of non-material changes for the non-objection procedure to apply remains relevant, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission to adjust the transactions in scope of the obligation and to change the list of non-material changes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in

the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[39]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts

(50) Since the objectives of this Regulation, namely to increase the safety and efficiency of Union CCPs by improving their attractiveness, encouraging clearing in the Union and enhancing the cross-border consideration of risks cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(51) Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) Article 3 is replaced by the following:

'Article 3

Intragroup transactions

1. In relation to a non-financial counterparty, an intragroup transaction shall be an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or, if it is established in a third country that third country is not listed pursuant to paragraphs 4 and 5.

2. In relation to a financial counterparty, an intragroup transaction shall be any of the following:

(a) an OTC derivative contract entered into with another counterparty which is part of the same group, provided that all of the following conditions are met:

(a) the financial counterparty is established in the Union or, if it is established in a third country, that third country is not listed pursuant to paragraphs 4 and 5;

(b) the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;

(c) both counterparties are included in the same consolidation on a full basis;

[39] OJ L 123, 12.5.2016, p. 1.

(d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(b) an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme, referred to in Article 113(7) of Regulation (EU) No 575/2013, provided that the condition set out in point (a)(ii) of this paragraph is met;

(c) an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body, as referred to in Article 10(1) of Regulation (EU) No 575/2013;

(d) an OTC derivative contract entered into with a non-financial counterparty which is part of the same group, provided both the following conditions are met:

(a) both counterparties to the derivative contract are included in the same consolidation on a full basis and are subject to an appropriate centralised risk evaluation, measurement and appropriate control procedures;

(b) the non-financial counterparty is established in the Union or, if it is established in a third-country, that third country is not listed under paragraphs 4 and 5.

3. For the purposes of this Article, counterparties shall be considered included in the same consolidation when they are both any of the following:

(a) included in a consolidation in accordance with Directive 2013/34/EU or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation;

(b) covered by the same consolidated supervision in accordance with Directive 2013/36/EU or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 127 of Directive 2013/36/EU.

4. For the purposes of this Article, transactions with counterparties established in any of the following third countries shall not benefit from any of the exemptions for intragroup transactions:

(a) where the third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[*1];

(b) where the third country is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[*2] and their subsequent updates which are specifically approved twice a year, customarily in February and October, and published in series C of the *Official Journal of the European Union*.

5. Where appropriate in the light of the legal, supervisory and enforcement arrangements of a third country with regard to risks, including counterparty credit risk and legal risk, the Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation to identify the third countries whose entities may not benefit from any of the exemptions for intragroup transactions despite not being listed pursuant to paragraph 4.

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*1 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).'

*2 Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 413 I, 12.10.2021, p. 1).;

(2) in Article 4(1), the following subparagraph is added:

'The obligation to clear all OTC derivative contracts does not apply to contracts concluded in situations as referred to in the first subparagraph, point (a)(iv), between, on one side, a financial counterparty that meets the conditions set out in Article 4a(1), second subparagraph, or a non-financial counterparty that meets the conditions set out in Article 10(1), second subparagraph, and, on the other side, a pension scheme arrangement established in a third country and operating on a national basis, provided that such entity or arrangement is authorised, supervised and recognised under national law and where its primary purpose is to provide retirement benefits and is exempted from the clearing obligation under its national law.';

(3) in Article 4a(3), the first subparagraph is replaced by the following:

'In calculating the positions referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25, entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.';

(4) the following Articles 7a and 7b are inserted:

'Article 7a

Active Account

1. Financial counterparties or a non-financial counterparties that are subject to the clearing obligation in accordance with Articles 4a and 10 and clear any of the categories of the derivative contracts referred to in paragraph 2 shall clear at least a proportion of such contracts at accounts at CCPs authorised under Article 14.

2. The categories of derivative contracts subject to the obligation referred to in paragraph 1 shall be any of the following:

(a) interest rate derivatives denominated in euro and Polish zloty;

(b) Credit Default Swaps (CDS) denominated in euro;

(c) Short-Term Interest Rate Derivatives (STIR) denominated in euro.

3. A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall calculate its activities in the categories of derivative contracts referred to in paragraph 1 at CCPs authorised under Article 14.

4. A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall report to the competent authority of the CCP or CCPs it uses the outcome of the calculation referred to in paragraph 2 on an annual basis, confirming their compliance with the obligation set out in that paragraph. The CCP's competent authority shall immediately transmit that information to ESMA and the Joint Monitoring Mechanism referred to in Article 23c.

5. ESMA shall, in cooperation with the EBA, EIOPA and ESRB and after consulting the ESCB, develop draft regulatory technical standards specifying:

(a) the proportion of activity in each category of the derivative contracts referred to in paragraph 2; that proportion shall be set at a level that results in a reduction in clearing in those derivative contracts at those Tier 2 CCPs offering services of substantial systemic importance for the financial stability of the Union or one or more of its Member States pursuant to Article 25(2c) and that ensures clearing in such derivative contracts is no longer of substantial systemic importance;

(b) the methodology for calculation under paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. Where ESMA undertakes an assessment pursuant to Article 25(2c) and concludes that certain services or activities provided by Tier 2 CCPs are of substantial systemic importance for the Union or one or more of its Member States or that services or activities that were previously identified by ESMA as being of substantial systemic importance for the Union or one or more of its Member States no longer are, the Commission is empowered to adopt a delegated act to amend paragraph 2 accordingly, in accordance with Article 82.

Article 7b

Information on clearing services

1. Clearing members and clients that provide clearing services both at a CCP authorised under Article 14 and at a CCP recognised under Article 25 shall, when one of their clients submits a contract for clearing, inform that client about the possibility to clear such contract at the CCP authorised under Article 14.

2. Clearing members and clients that are established in the Union or are part of a group subject to consolidated supervision in the Union and that clear in a CCP recognised under Article 25, shall report to their competent authority the scope of their clearing activity in such CCP on an annual basis, specifying all of the following:

(a) the type of financial instruments or non-financial contracts cleared;

(b) the average values cleared over 1 year per Union currency and per asset class;

(c) the amount of margins collected;

(d) the default fund contributions

(e) the largest payment obligation.

That competent authority shall promptly transmit that information to ESMA and the Joint Monitoring Mechanism referred to in Article 23c.

3. ESMA shall, in cooperation with the EBA, EIOPA and ESRB and after consulting the ESCB, develop draft regulatory technical standards further specifying the content of the information to be reported and the level of detail of the information to be provided in accordance with paragraph 2, taking into account which information is already available to ESMA under the existing reporting framework.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA shall develop draft implementing technical standards specifying the format of the information to be submitted to the competent authority referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(5) Article 9 is amended as follows:

(a) in paragraph 1, the third and fourth subparagraphs are deleted;

(b) in paragraph 1a, fourth subparagraph,

- point (a) is replaced by the following:

"(a) that third country entity would be qualified as a financial counterparty if it were established in the Union; and"

- point (b) is deleted.

(6) in Article 10, paragraphs 2a to 5 are replaced by the following:

'2a. The relevant competent authorities of the non-financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure the effective calculation of the positions and evaluate and assess the level of exposure in OTC derivative contracts at the group level.

3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25 entered into by the non-financial counterparty which are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty.

4. ESMA shall develop draft regulatory technical standards, after having consulted the ESRB and other relevant authorities, specifying all of the following:

(a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity referred to in paragraph 3;

(b) values of the clearing thresholds, which are determined taking into account the systemic relevance of the open positions and future net exposures per counterparty and per class of OTC derivatives;

(c) the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date =12 months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

ESMA shall review, in consultation with the ESRB, the clearing thresholds referred to in the first subparagraph, point (b), taking into account, in particular, the interconnectedness of financial counterparties. That review shall be conducted at least every 2 years, and earlier where necessary or where required under the mechanism established under the first subparagraph, point (c), and may propose changes to the thresholds as specified in the first subparagraph, point (b), by the regulatory technical standards adopted pursuant to this Article. When reviewing the clearing thresholds, ESMA shall consider whether the classes of OTC derivatives, for which a clearing threshold has been set, are still the relevant classes of OTC derivatives or if new classes should be introduced.

That periodic review shall be accompanied by a report by ESMA on the subject.

5. Each Member State shall designate an authority responsible for ensuring that the obligations of non-financial counterparties under this Regulation are met. That authority shall report to ESMA at least once a year, and more frequently where an emergency situation is identified under Article 24, on the activity in OTC derivatives of the non-financial counterparties it is responsible for as well as that of the group they belong to.

At least every 2 years, ESMA shall present a report to the European Parliament, the Council and the Commission on the activities of Union non-financial counterparties in OTC derivatives, identifying areas where there is a lack of convergence and coherence in the application of this Regulation as well as potential risks to the financial stability of the Union.';

(7) Article 11 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

'A non-financial counterparty becoming subject for the first time to the obligations laid down in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.';

(b) in paragraph 3, the following subparagraphs are added:

‘A non-financial counterparty becoming subject for the first time to the obligations laid out in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.

EBA may issue guidelines or recommendations with a view to ensure a uniform application of the risk-management procedures referred to in the first subparagraph, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.

EBA shall develop drafts of those guidelines or recommendations in cooperation with the ESAs.’;

(c) in paragraph 15, first subparagraph, point (aa) is deleted.

(8) Article 13 is deleted;

(9) Article 14 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. The authorisation referred to in paragraph 1 shall be granted for activities linked to clearing and shall specify the services or activities which the CCP is authorised to provide or perform including the classes of financial instruments covered by such authorisation.

An entity applying for authorisation as a CCP to clear financial instruments shall include in its application, in addition to the classes of financial instrument it applies to clear, the classes of non-financial instruments suitable for clearing that such CCP intends to clear.

Where a CCP authorised pursuant to this Article intends to clear classes of non-financial instruments suitable for clearing, it shall apply for an extension of its authorisation pursuant to Article 15.’;

(b) the following paragraphs 6 and 7 are added:

‘6. To ensure the consistent application of this Article, ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that shall accompany an application for authorisation pursuant to paragraph 1 and specifying the information that such documents shall contain with a view to demonstrating that the CCP complies with all relevant requirements of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date =12 months after the date of entry into force of this Regulation]

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. ESMA shall develop draft implementing technical standards specifying the electronic format of the application to be submitted to the central database for authorisation referred to in paragraph 1.

ESMA shall submit those draft implementing technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(10) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CCP wishing to extend its business to additional services or activities not covered by the existing authorisation shall submit a request for extension to the CCP's competent authority. The offering of clearing services or activities for which the CCP has not already been authorised shall be considered to be an extension of that authorisation.

The extension of authorisation shall be made in accordance with either of the following:

(a) the procedure set out in Article 17;

(b) the procedure set out in Article 17a where the applicant CCP so requests pursuant to Article 17a(3).';

(b) paragraph 3 is replaced by the following:

'3. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that shall accompany an application for an extension of authorisation pursuant to paragraph 1 and specifying the information such documents shall contain with a view to demonstrating that the CCP meets all relevant requirements of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(c) the following paragraph 4 is added:

'4. ESMA shall develop draft implementing technical standards specifying the electronic format of the application to be submitted to the central database for an extension of the authorisation referred to in paragraph 1.

ESMA shall submit those draft implementing technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(11) Article 17 is amended as follows:

(a) the title of the Article is replaced by the following:

‘Procedure for granting and refusing an application for authorisation or for an extension of authorisation’

(b) paragraphs 1, 2 and 3 are replaced by the following:

‘1. The applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of its authorisation as referred to in Article 15(1) in an electronic format via the central database referred to in paragraph 7. The application shall be immediately shared with the CCP’s competent authority, ESMA and the college referred to in Article 18(1).

The CCP’s competent authority shall, within 2 working days after such application has been received, acknowledge receipt of the application, stating to the CCP whether it contains the documents required pursuant to Article 14(6) and (7) or, where the CCP has applied for an extension of its authorisation, pursuant to Article 15(3) and (4).

Where the CCP’s competent authority determines that not all documents required pursuant to Article 14(6) and (7) or Article 15(3) and (4) have been submitted, it shall reject the CCP’s application.

2. The applicant CCP shall provide all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation.

3. Within 40 working days of the end of the period set out in the second subparagraph of paragraph 1 (“the risk assessment period”), the CCP’s competent authority, ESMA and the college shall each conduct risk assessments of the CCP’s compliance with the relevant requirements laid down in this Regulation. By the end of the risk assessment period:

(a) the CCP’s competent authority shall transmit its draft decision and report to ESMA and the college;

(b) ESMA shall adopt an opinion in accordance with Article 24a(7) and transmit it to the CCP’s competent authority and the college;;

(c) the college shall adopt an opinion pursuant to Article 19 and transmit it to the CCP’s competent authority and ESMA.

For the purposes of point (b), ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management, in particular in relation to identified cross-border risks or risks to the financial stability of the Union.

For the purposes of point (c), the college may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management.’;

(d) the following paragraphs 3a and 3b are inserted:

‘3a. During the risk assessment period referred to in paragraph 3, the CCP’s competent authority, ESMA or any of the college members may submit questions directly to the CCP. Where the CCP does not respond to such questions within the time period set by the requesting authority, the CCP’s competent authority, ESMA or the college may take a decision in the absence of the CCP’s response or may decide to extend the assessment period by a maximum of 10 working days, if, in their view, the question is material for the assessment.

3b. Within 10 working days of receipt of both the ESMA opinion and the college opinion, the CCP's competent authority shall adopt its decision and transmit it to ESMA and the college.

Where the CCP's competent authority does not agree with an opinion of ESMA or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

ESMA shall publish the fact that a competent authority does not comply or does not intend to comply with its opinion or the opinion of the college or with any conditions or recommendations included therein. ESMA may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with the ESMA opinion or the college opinion or any conditions or recommendations contained therein.';

(e) paragraph 4 is replaced by the following:

'4. The CCP's competent authority shall, after duly considering the opinions of ESMA and the college referred to in paragraph 3, including any conditions or recommendations contained therein, grant authorisation as referred to in Articles 14 and Article 15(1), second subparagraph, point (a), only where it is fully satisfied that the applicant CCP:

(a) complies with all the requirements laid down in this Regulation including, where applicable, for the provision of clearing services or activities for non-financial instruments; and

(b) is notified as a system pursuant to Directive 98/26/EC.

The CCP shall not be authorised where all the members of the college, excluding the authorities of the Member State where the CCP is established, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the CCP not be authorised. That opinion shall state in writing the full and detailed reasons why the college considers that the requirements laid down in this Regulation or other Union law are not met.

Where a joint opinion by mutual agreement as referred to in the second subparagraph has not been reached and a majority of two-thirds of the college have expressed a negative opinion, any of the competent authorities concerned, based on that majority of two-thirds of the college, may, within 30 calendar days of the adoption of that negative opinion, refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The referral decision shall state in writing the full and detailed reasons why the relevant members of the college consider that the requirements laid down in this Regulation or other parts of Union law are not met. In that case the CCP's competent authority shall defer its decision on authorisation and await any decision on authorisation that ESMA may take in accordance with Article 19(3) of Regulation (EU) No 1095/2010. The competent authority shall take its decision in conformity with ESMA's decision. The matter shall not be referred to ESMA after the end of the 30-day period referred to in the third subparagraph.

Where all the members of the college, excluding the authorities of the Member State where the CCP is established, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the CCP not be authorised, the CCP's competent

authority may refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The competent authority of the Member State where the CCP is established shall transmit the decision to the other competent authorities concerned.';

(f) paragraph 7 is replaced by the following:

'7. ESMA shall maintain a central database providing access to the CCP's competent authority, ESMA, and the members of the college for that CCP ('registered recipients'), to all documents registered within the database for that CCP. The CCP shall submit the application referred to in Article 14, Article 15(1), second subparagraph, point (a), and Article 49 via that database.

The registered recipients shall upload promptly all documents they receive from the CCP in relation to an application pursuant to paragraph 1 and the central database shall automatically inform the registered recipients when changes have been made to its content. The central database shall contain all documents provided by an applicant CCP under paragraph 1 and all other documents relevant for the assessment by the CCP's competent authority, ESMA and the college.

Members of the CCP Supervisory Committee shall also have access to the central database for the performance of their tasks pursuant to Article 24a(7). The Chair of the CCP Supervisory Committee may limit access to some of the documents for the members of the CCP Supervisory Committee referred to in Article 24a, points (c) and (d)(ii), where justified based on confidentiality concerns.';

(12) the following Articles 17a and 17b are inserted:

'*Article 17a*

Non-objection procedure for granting a request for extension of activities or services

1. The non-objection procedure shall apply to non-material changes to a CCP's existing authorisation in any of the following cases where the proposed additional clearing service or activity:

(a) fulfils all of the following the conditions:

(i) the CCP intends to clear one or more financial instruments belonging to the same classes of financial instruments for which it has been authorised to clear under Articles 14 or 15;

(ii) the financial instruments referred to in point (i) are traded on a trading venue for which the CCP already provides clearing services or performs activities; and

(iii) the proposed additional clearing service or activity does not involve a payment in a new currency;

(b) adds a new Union currency in a class of financial instruments already covered by the CCP's authorisation; or

(c) adds one or more additional tenors to a class of financial instruments already covered by the CCP's authorisation provided that the maturity range is not significantly extended.

2. The CCP's competent authority may, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, also decide to apply the non-objection procedure of this Article where a CCP so requests and where the proposed additional clearing service or activity does not fulfil any of the following conditions:

(a) it results in the CCP needing to adapt significantly its operational structure, at any point in the contract cycle:

(b) it includes offering contracts that cannot be liquidated in the same manner, such as via direct offer or auction, or together with contracts already cleared by the CCP;

(c) it results in the CCP needing to take into account material new contract specifications, such as significant extensions of the ranges of maturities or a new option exercise styles within a category of contracts;

(d) it results in the introduction of material new risks, linked to the different characteristics of the assets referenced;

(e) it includes offering a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, CSD or payment system which the CCP did not previously use.

3. A CCP that submits a request for extension requesting that the non-objection procedure be applied, shall demonstrate why the proposed extension of its business to additional clearing services or activities qualifies under paragraphs 1 or 2 to be assessed under the non-objection procedure. The CCP shall submit its application in an electronic format via the central database referred to in Article 17(7) and shall provide all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the relevant requirements laid down in this Regulation.

A CCP that applies for an extension of its authorisation requesting that the non-objection procedure be applied and the proposed additional clearing services or activities fall within the scope of paragraph 1, may start clearing such additional financial instruments or non-financial instruments suitable for clearing before the decision of the CCP's competent authority pursuant to paragraph 4.

4. Within 10 working days of receipt of an application pursuant to paragraph 2, the CCP's competent authority shall, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, decide whether the application shall be subject to the non-objection procedure set out in this Article or, if the CCP's competent authority has identified material risks as a result of the proposed extension of the CCP's business to additional clearing services or activities, that the procedure set out in Article 17 shall apply. The CCP's competent authority shall notify the applicant CCP of its decision. Where the CCP's competent authority has decided that the procedure set out in Article 17 shall apply, the CCP shall, within 5 working days after receipt of such notification, cease providing such clearing service or activity.

5. Where a CCP's competent authority, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, has not expressed its objection to the CCP's proposed additional services or activities within 10 working days of receipt of the application where paragraph 1 applies or of receipt of the notification referred to in paragraph 4, where that paragraph applies, confirming that the non-

objection procedure set out in this Article applies, the authorisation shall be deemed as granted.

6. The Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation by specifying any changes to the list of non-material changes listed under paragraph 1, where such a change would not bring an increased risk to the CCP.

Article 17b

Procedure for seeking the opinion from ESMA and the college

1. A CCP's competent authority shall submit in electronic format via the central database referred to in Article 17(7) a request for an opinion:

(a) by ESMA pursuant to Article 23a(2), where the competent authority intends to adopt a decision in relation to Articles 7, 8, 20, 21, 29, 30, 31, 32, 33, 35, 36, 41 and 54;

(b) by the college pursuant to Article 18, where the competent authority intends to adopt a decision in relation to Article 20, 21, 30, 31, 32, 35, 41, 49, 51 and 54.

That request for an opinion shall be shared immediately with the registered recipients.

2. Unless otherwise specified under the relevant Article, ESMA and the college shall, within 30 working days of receipt of the request referred to in paragraph 1 ('the assessment period'), assess the CCP's compliance with the respective requirements. By the end of the assessment period:

(a) the CCP's competent authority shall transmit its draft decision and report to ESMA and the college;

(b) ESMA shall adopt an opinion in accordance with Article 24a(7), first subparagraph, point (bc), and transmit it to the CCP's competent authority and the college. ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management, in particular in relation to identified cross-border risks or risks to the financial stability of the Union;

(c) the college shall adopt an opinion pursuant to Article 19 and transmit it to ESMA and the CCP's competent authority. The college opinion may include conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management.

3. Within 10 working days of receipt of the ESMA opinion and, where required, the college opinion, the CCP's competent authority shall, after duly considering the opinions of ESMA and the college, including any conditions or recommendations contained therein, adopt its decision and transmit it to ESMA and the college.

Where the CCP's competent authority does not agree with an opinion of ESMA or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

ESMA shall publish the fact that a competent authority does not comply or does not intend to comply with its opinion or the opinion of the college or with any conditions or recommendations included therein. ESMA may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with the

ESMA opinion or the college opinion or any conditions or recommendations contained therein.';

(13) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Within 30 calendar days of the submission of a complete application in accordance with Article 17, the CCP's competent authority shall establish a college to facilitate the exercise of the tasks referred to in Articles 15, 17 , 20, 21, 30, 31, 32, 35, 41, 49, 51 and 54.';

(b) in paragraph 2, point (a) is replaced by the following:

'(a) the Chair or any of the independent members of the CCP Supervisory Committee referred to in Article 24a(2), points (a) and (b), who shall manage and chair the college;';

(14) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Where the college is required to give an opinion pursuant to this Regulation, it shall reach a joint opinion determining whether the CCP complies with all the requirements laid down in this Regulation.

Without prejudice to Article 17(4), third subparagraph, and if no joint opinion is reached in accordance with the first subparagraph, the college shall adopt a majority opinion within the same period.';

(b) in paragraph 3, the fourth subparagraph is replaced by the following:

'The members of the college referred to in Article 18(2), points (ca) and (i), shall have no voting rights on the opinions of the college.';

(c) paragraph 4 is deleted;

(15) in Article 20, paragraphs 3 to 7 are replaced by the following:

'3. The CCP's competent authority shall consult ESMA and the members of the college, in accordance with paragraph 6, on the necessity to withdraw the authorisation of the CCP, except where a decision is required urgently.

4. ESMA or any member of the college may, at any time, request that the CCP's competent authority examine whether the CCP remains in compliance with the conditions under which authorisation was granted.

5. The CCP's competent authority may limit the withdrawal to a particular service, activity, or class of financial instruments or non-financial instruments.

6. Before the CCP's competent authority takes a decision to withdraw a particular service, activity, or class of financial instruments or non-financial instruments, it shall request the opinions of ESMA and the college in accordance with Article 17b.

7. Where a CCP's competent authority takes a decision on the withdrawal of authorisation in full or in relation to a particular service, activity, or class of financial instruments or non-financial instruments, that decision shall take effect throughout the Union.';

(16) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The competent authorities referred to in Article 22 shall do all of the following:

(a) review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation;

(b) review the services or activities the CCP has started providing following the non-objection procedures pursuant to Article 17a or pursuant to Article 49;

(c) evaluate the risks, including financial and operational risks, to which CCPs are, or might be, exposed.’;

(b) paragraphs 3 and 4 are replaced by the following:

‘3. The competent authorities shall, after having considered the input of the joint supervisory team set up for that CCP pursuant to Article 23b, establish the frequency and depth of the review and evaluation referred to in paragraph 1 of this Article, having particular regard to the size, systemic importance, nature, scale, complexity of the activities and interconnectedness with other financial market infrastructures of the CCPs concerned and to the supervisory priorities established by ESMA in accordance with Article 24a(7), first subparagraph, point (ba). The competent authorities shall update the review and evaluation at least on an annual basis.

CCPs shall be subject to on-site inspections. Competent authorities shall invite the members of the joint supervisory team set up for that CCP pursuant to Article 23b, to participate in on-site inspections.

The competent authority shall forward to the members of the joint supervisory team set up for that CCP pursuant to Article 23b any information received from the CCPs during or in relation to on-site inspections.

4 The competent authorities shall regularly, and at least annually, submit a report to the college on the results of the review and evaluation as referred to in paragraph 1, including whether the competent authority has taken any remedial action or imposed penalties. The competent authorities shall communicate the report covering a calendar year to ESMA by 30 March of the following calendar year. That report shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.’;

(17) Article 23a is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. ESMA shall fulfil a coordination role between competent authorities and across colleges to:

(a) build a common supervisory culture and consistent supervisory practices;

(b) ensure uniform procedures and consistent approaches;

(c) strengthen consistency in supervisory outcomes, in particular with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact;

(d) strength coordination in emergency situations in accordance with Article 24;

(e) assess risks when providing opinions to competent authorities pursuant to paragraph 2 on CCPs’ compliance with the requirements of this Regulation, in

particular in relation to identified cross-border risks or risks to the financial stability of the Union, and providing recommendations as to how a CCP shall mitigate those risks.

2. Competent authorities shall submit their draft decisions to ESMA for its opinion before adopting any act or measure pursuant to Articles 7, 8 and 14, Article 15(1), second subparagraph, point (a) and Articles 20 and 21, Articles 29 to 33, and Articles 35, 36, 41, and 54.

Competent authorities may also submit draft decisions to ESMA for its opinion before adopting any other act or measure in accordance with their duties under Article 22(1).';

(b) paragraphs 3 and 4 are deleted;

(18) the following Articles 23b and 23c are inserted:

'*Article 23b*

Joint Supervisory Teams

1. A joint supervisory team shall be established for the supervision of each CCP authorised under Article 14. Each joint supervisory team shall be composed of staff members from the CCP's competent authority, ESMA and the members of the college referred to in Article 18, points (c), (g) and (h). Other members of the college may also request to participate in the joint supervisory team. Joint supervisory teams shall work under the coordination of a designated competent authority staff member.

2. The tasks of a joint supervisory team shall include, but are not limited to, all of the following:

(a) provide input to the competent authorities, ESMA and the colleges pursuant to Article 17a (2), (4) and (5)and Article 21(3);

(b) participate to on-site inspections pursuant to Article 21(3);

(c) liaise with competent authorities and members of the college, where relevant;

(d) where a CCP's competent authority so requests, provide assistance to that competent authority in assessing the CCP's compliance with the requirements of this Regulation.

3. The CCP's competent authority shall be in charge of the establishment of joint supervisory teams.

4. ESMA and authorities participating to the joint supervisory teams shall consult each other and agree on the use of resources with regard to the joint supervisory teams.

Article 23c

Joint Monitoring Mechanism

1. ESMA shall establish a Joint Monitoring Mechanism for the exercise of the tasks referred to in paragraph 2.

The Joint Monitoring Mechanism shall be composed of:

(a) representatives of ESMA;

(b) representatives of EBA and EIOPA;

(c) representatives of the Commission, the ESRB, the ECB and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance Council Regulation (EU) No 1024/2013.

ESMA shall manage and chair the meetings of the Joint Monitoring Mechanism. The Chair of the Joint Monitoring Mechanism, upon request of the other members of the Joint Monitoring Mechanism or on his own initiative, may invite other authorities to participate in the meetings when relevant to the topics to be discussed.

2. The Joint Monitoring Mechanism shall:

(a) monitor the implementation of the requirements set out in Articles 7a and 7b, including all of the following:

(i) the overall exposures and reduction of exposures to substantially systemically important clearing services identified pursuant to Article 25(2c);

(ii) developments related to clearing in CCPs authorised under Article 14 and access to clearing by clients to such CCPs, including fees charged by such CCPs for establishing accounts pursuant to Article 7a and any fees charged by clearing members to their clients for establishing accounts and undertaking clearing pursuant to Article 7a;

(iii) other significant developments in clearing practices having an impact on the level of clearing at CCPs authorised under Article 14;

(b) monitor client clearing relationships, including portability and clearing members and clients' interdependencies and interactions with other financial market infrastructures;

(c) contribute to the development of Union-wide assessments of the resilience of CCPs focussing on liquidity risks concerning CCPs, clearing members and clients;

(d) identify concentration risks, in particular in client clearing, due to the integration of Union financial markets, including where several CCPs, clearing members or clients use the same service providers;

(e) monitor the effectiveness of the measures aimed at improving the attractiveness of Union CCPs, encouraging clearing at Union CCPs and enhancing the monitoring of cross-border risks.

The bodies participating in the Joint Monitoring Mechanism and national competent authorities shall cooperate and share the information necessary to carry out the monitoring activities referred to in the first subparagraph.

Where the required information is not made available, including information referred to in Article 7a(4), ESMA may, by simple request, require authorised CCPs, their clearing members and their clients to provide the necessary information enabling ESMA and the other bodies participating to Joint Monitoring Mechanism to perform the assessment referred to in the first subparagraph.

3. ESMA shall, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, submit an annual report to the European Parliament, the Council and the Commission on the results of its activities pursuant to paragraph 2.

4. ESMA shall act in accordance with Article 17 of Regulation (EU) No 1095/2010 where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein:

(a) it considers that competent authorities fail to ensure clearing members' and clients' compliance with the requirement set out in Article 7a;

(b) it identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law.

Before acting in accordance with the first subparagraph, ESMA may issue guidelines or recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010.

5. Where ESMA, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, considers that compliance with the requirement set out in Article 7a does not effectively ensure the reduction of Union clearing members' and clients' excessive exposure to Tier 2 CCPs, it shall review the regulatory technical standards referred to in Article 7a(5), setting, where necessary, an appropriate adaptation period which shall not exceed 12 months.';

(19) Article 24 is replaced by the following:

'*Article 24*

Emergency situations

1. The CCP's competent authority or any other relevant authority shall inform ESMA, the college, the relevant members of the ESCB, the Commission and other relevant authorities without undue delay of any emergency situation relating to a CCP, including all of the following:

(a) situations or events which impact, or are likely to impact, the prudential or financial soundness or the resilience of CCPs authorised in accordance with Article 14, their clearing members or clients;

(b) where a CCP intends to activate its recovery plan pursuant to Article 9 of Regulation (EU) No 2021/23, a competent authority has taken an early intervention measure pursuant to Article 18 of that Regulation or a competent authority has required a total or partial removal of the senior management or board of the CCP pursuant to Article 19 of that Regulation;

(c) where there are developments in financial markets, which may have an adverse effect on market liquidity, the transmission of monetary policy, the smooth operation of payment systems or the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.

2. ESMA shall coordinate competent authorities, the resolution authority designated pursuant to Article 3(1) of Regulation (EU) 2021/23 and colleges to build a common response to emergency situations relating to a CCP.

3. In case of emergency situations, except where a resolution authority has taken a resolution action in relation to a CCP pursuant to Article 21 of Regulation (EU) No 2021/23, and to coordinate the responses of competent authorities, a meeting of the CCP Supervisory Committee:

(a) may be convened by the Chair of the CCP Supervisory Committee;

(b) shall be convened by the Chair of the CCP Supervisory Committee, upon the request of two members of the CCP Supervisory Committee.

4. Any of the following authorities may also be invited to the meeting referred to in the paragraph 3, where relevant, considering the issues to be discussed at the meeting:

(a) the relevant central banks of issue;

(b) the relevant competent authorities for the supervision of clearing members, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013;

(c) the relevant competent authorities for the supervision of trading venues;

(d) the relevant competent authorities for the supervision of clients where they are known;

(e) the relevant resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23.

Where a meeting of the CCP Supervisory Committee is held pursuant to the first subparagraph, the Chair shall inform EBA, EIOPA, the ESRB and the Commission thereof who shall also be invited to participate to that meeting upon their request.

5. ESMA may, by simple request, require authorised CCPs, their clearing members and clients, connected financial market infrastructures and related third parties to whom those CCPs have outsourced operational functions or activities to provide all necessary information to enable ESMA to carry out its coordination function under this Article.

6. ESMA may, upon the proposal of the CCP Supervisory Committee, issue emergency recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010 addressed to one or more competent authorities recommending them to adopt temporary or permanent supervisory decisions in line with the requirements set out in Article 16 and in Titles IV and V to avoid or mitigate significant adverse effects on the Union financial stability. ESMA may issue emergency recommendations only where more than one authorised CCP is impacted or where Union-wide events are destabilising cross-border cleared markets.';

(20) Article 24a is amended as follows:

(a) in paragraph 2, point (d) (ii) is replaced by the following:

'(ii) where the CCP Supervisory Committee convenes in relation to CCPs authorised in accordance with Article 14, in the context of discussions pertaining to paragraph 7 of this Article, the central banks of issue of the Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee, who shall be non-voting.';

(b) paragraph 3 is replaced by the following;

'3. The Chair may invite as observers to the meetings of the CCP Supervisory Committee, where appropriate and necessary, members of the colleges referred to in Article 18, representatives from the relevant authorities of clients where they are known and from the relevant Union institutions and bodies.';

(c) paragraph 7 is amended as follows:

(i) the introductory wording is replaced by the following:

‘In relation to CCPs authorised or applying for authorisation in accordance with Article 14, the CCP Supervisory Committee shall, for the purpose of Article 23a(2), prepare decisions and carry out the tasks entrusted to ESMA in the following points:’;

(ii) the following points (ba), (bb) and (bc) are inserted:

‘(ba) at least annually, discuss and identify supervisory priorities for CCPs authorised under Article 14 in order to feed in the preparation of the Union strategic supervisory priorities by ESMA in accordance with Article 29a of Regulation (EU) No 1095/2010;

(bb) consider, in cooperation with the EBA, EIOPA, and the ECB in carrying out its tasks within a single supervisory mechanism under Regulation (EU) No 1024/2013, any cross-border risks arising from CCPs’ activities, including due to CCPs’ interconnectedness, interlinkages and concentration risks due to such cross-border connections;

(bc) prepare draft opinions for adoption by the Board of Supervisors in accordance with Articles 17 and 17b and draft validation decisions in accordance with Article 49;’;

(iii) the following subparagraph is added:

‘ESMA shall on a yearly basis report to the Commission on the cross-border risks arising from CCPs’ activities referred to in point (bb) in the first subparagraph.’;

(21) Article 25 is amended as follows:

(a) in paragraph 4, the third subparagraph is replaced by the following;

‘The recognition decision shall be based on the conditions set out in paragraph 2 for Tier 1 CCPs and in paragraph 2, points (a) to (d), and paragraph 2b for Tier 2 CCPs. Within 180 working days of the determination that an application is complete in accordance with the second subparagraph, ESMA shall inform the applicant CCP in writing, with a fully reasoned explanation, whether the recognition has been granted or refused.’;

(b) in paragraph 5, the second subparagraph is replaced by the following:

‘Where the review is undertaken in accordance with point (a) of the first subparagraph, it shall be conducted in accordance with paragraphs 2 to 4. Where the review is undertaken in accordance with point (b) of the first subparagraph, it shall also be conducted in accordance with paragraphs 2 to 4, however the CCP referred to in paragraph 1 shall not be required to submit a new application but shall provide ESMA with all information necessary for the review of its recognition.’;

(c) in paragraph 6, the following subparagraph is added:

‘Where in the interests of the Union and considering the potential risks for the Union financial stability due to the expected participation of clearing members and trading venues established in the Union to CCPs established in a third country, the Commission may adopt the implementing act referred to in the first subparagraph irrespective of whether point (c) of that subparagraph is fulfilled.’;

(d) paragraph 7 is replaced by the following:

'7. ESMA shall establish effective cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6..';

(e) the following paragraphs 7a, 7b and 7c are added:

'7a. Where ESMA has not yet determined the tiering of a CCP or where ESMA has determined that all or some CCPs in a relevant third country are Tier 1 CCPs, the cooperation arrangements referred to in paragraph 7 shall take into account the risk the provision of clearing services by those CCPs entails and shall specify:

(a) the mechanism for the exchange of information on an annual basis between ESMA, the central banks of issue referred to in paragraph 3, point (f), and the competent authorities of the third countries concerned, so that ESMA is able to:

(i) ensure that the CCP complies with the conditions for recognition under paragraph 2;

(ii) identify any potential material impact on market liquidity or the financial stability of the Union or one or more of its Member States; and

(iii) monitor clearing activities in one, or more, of the CCPs established in such third country by clearing members established in the Union, or is part of a group subject to consolidated supervision in the Union.

(b) exceptionally, the mechanism for the exchange of information on a quarterly basis requiring detailed information covering the aspects referred to in paragraph 2a and in particular information on significant changes to risk models and parameters, extension of CCP activities and services and changes in the client account structure, with the aim to detect if a CCP is potentially close to becoming or is potentially likely to become systemically important for the financial stability of the Union or one or more of its Member States.

(c) the mechanism for prompt notification to ESMA where a third-country competent authority deems a CCP it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;

(d) the procedures necessary for the effective monitoring of regulatory and supervisory developments in a third country;

(e) the procedures for third-country authorities to inform ESMA, the third-country CCP college referred to in Article 25c, and the central banks of issue referred to in paragraph 3, point (f), without undue delay of any emergency situations relating to the recognised CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in the Union or one of its Member States and the procedures and contingency plans to address such situations;

(f) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA in accordance with Articles 25f, 25k(1), point (b), 25l, 25m and 25p;

(g) the consent of third-country authorities to the onward sharing of any information they have provided to ESMA under the cooperation arrangements with the authorities referred to in paragraph 3 and the members of the third-country CCP college, subject to the professional secrecy requirements set out in Article 83.

7b. Where ESMA has determined that at least one CCP in a relevant third country is a Tier 2 CCP, the cooperation arrangements referred to in paragraph 7 shall specify in relation to those Tier 2 CCPs at least the following:

(a) the elements referred to in paragraph 7a, points (a), (c), (d), (e) and (g), where cooperation arrangements are not already established with the relevant third-country pursuant to the second subparagraph;

(b) the mechanism for the exchange of information on a monthly basis between ESMA, the central banks of issue referred to paragraph 3, point (f), and the competent authorities of the third countries concerned, including access to all information requested by ESMA to ensure CCP's compliance with the requirements referred to in paragraph 2b;

(c) the procedures concerning the coordination of supervisory activities, including the agreement of third-country authorities to allow investigations and on-site inspections in accordance with Articles 25g and 25h respectively;

(d) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA in accordance with Articles 25b, 25f to 25m, 25p and 25q;

(e) the procedures for third-country authorities to promptly inform ESMA of the following with a focus on aspects relevant for the Union or one or more of its Member States:

(i) the establishment of recovery plans and resolution plans and any subsequent material changes to such plans;

(ii) if a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of that CCP, in particular, its ability to provide clearing services or where the third-country authorities envisage to take a resolution action in the near future.

7c. Where ESMA considers that a third-country competent authority fails to apply any of the provisions laid down in a cooperation arrangement established in accordance with paragraphs 7, 7a and 7b, it shall inform the Commission thereof confidentially and without delay. In such a case, the Commission may decide to review the implementing act adopted in accordance with paragraph 6.';

(22) in Article 25b(1), the second subparagraph is replaced by the following:

'ESMA shall require from each Tier 2 CCP all of the following:

(i) a confirmation, at least on a yearly basis, that the requirements referred to in Article 25(2b) points (a), (c) and (d), continue to be fulfilled;

(ii) information and data on a regular basis to ensure ESMA is able to supervise those CCPs' compliance with the requirements referred to in Article 25(2b), point (a).';

(23) in Article 25p(1), point (c) is replaced by the following;

'(c) the CCP concerned has seriously and systematically infringed any of the applicable requirements laid down in this Regulation or no longer complies with any of the conditions for recognition laid down in Article 25 and has not taken the remedial action requested by ESMA within an appropriately set timeframe of up to a maximum of one year.';

(24) the following Article 25r is inserted:

'*Article 25r*

Public notice

Without prejudice to Articles 25p and 25q, ESMA may issue a public notice where all of the following conditions have been fulfilled:

(a) a third-country CCP has not paid the fees due under Article 25d or it has not paid fines due under Article 25j or periodic penalty payments due under Article 25k;

(b) the CCP has not taken any remedial action requested by ESMA in any of the situations laid down in Article 25p(1), point (c) within an appropriately set timeframe of up to six months.';

(25) in Article 26(1), the first subparagraph is replaced by the following:

'1. A CCP shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures. A CCP shall not be or become a clearing member, a client, or establish indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at a CCP.';

(26) Article 31 is amended as follows:

(a) in paragraph 2,the third and fourth subparagraph are replaced by the following:

'The competent authority shall, promptly and in any event within two working days of receipt of the notification referred to in this paragraph and of the information referred to in paragraph 3, acknowledge receipt in writing thereof to the proposed acquirer or vendor and share the information with ESMA and the college.

Within 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 32(4) and unless extended in accordance with this Article, ('the assessment period'), the competent authority shall carry out the assessment provided for in Article 32(1) ('the assessment'). The college shall issue an opinion pursuant to Article 19 and ESMA shall issue an

opinion pursuant to Article 24a(7), first subparagraph, point (bc) and in accordance with the procedure under Article 17b during the assessment period.';

(b) in paragraph 3 the first subparagraph is replaced by the following:

'The competent authority, ESMA and the college may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.';

(27) in Article 32(1), the fourth subparagraph is replaced by the following:

'The assessment of the competent authority concerning the notification provided for in Article 31(2) and the information referred to in Article 31(3), shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.';

(28) Article 35 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

'A CCP shall not outsource major activities linked to risk management unless such outsourcing is approved by the competent authority. The decision of the competent authority shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7)(bc) issued in accordance with the procedure set out in Article 17b.';

(b) paragraph 3 is replaced by the following:

'3. A CCP shall make all information necessary to enable the competent authority, ESMA and the college to assess the compliance of the performance of the outsourced activities with this Regulation available on request.';

(29) Article 37 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP. The criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP.';

(b) the following paragraph 1a is inserted:

'1a. A CCP shall accept non-financial counterparties as clearing members only if they are able to demonstrate that they are able to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

The competent authority of a CCP accepting non-financial counterparties shall regularly review such arrangements and report to ESMA and the college on their appropriateness.

A non-financial counterparty acting as a clearing member shall not be permitted to offer client clearing services and shall only keep accounts at the CCP for assets and positions held for its own account.

ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad-hoc peer review.';

(c) the following paragraph 7 is added:

'7. ESMA shall, after having consulted the EBA, develop draft regulatory technical standards further specifying the elements to be considered when laying down the admission criteria referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please enter 12 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010".

(30) Article 38 is amended as follows:

(a) in paragraph 7, the following subparagraph is added:

'Clearing members providing clearing services and clients providing clearing services shall inform their clients in a clear and transparent manner of the way the margin models of the CCP work, including in stress situations, and provide them with a simulation of the margin requirements they may be subject to under different scenarios. This shall include both the margins required by the CCP and any additional margins required by the clearing members and the clients providing clearing services themselves.';

(b) paragraph 8 is replaced by the following:

'8. The clearing members of the CCP and clients providing clearing services, shall clearly inform their existing and potential clients of the potential losses or other costs that they may bear as a result of the application of default management procedures and loss and position allocation arrangements under the CCP's operating rules, including the type of compensation they may receive, taking into account Article 48(7). Clients shall be provided with sufficiently detailed information to ensure that they understand the worst-case losses or other costs they could face should the CCP undertake recovery measures.';

(31) Article 41 is amended as follows:

(a) paragraphs 1, 2 and are replaced by the following:

'1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members and, where relevant, from CCPs with which it has interoperability arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall also be sufficient to cover losses that result from at least 99 % of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and, where relevant, with CCPs with which it has interoperability arrangements, at least on a daily basis. A CCP shall continuously monitor and revise the level of its margins to reflect current market conditions taking into account any potentially procyclical effects of such revisions.

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models shall be validated by the competent authority and subject to an opinion in accordance with Article 19 and an opinion by ESMA in accordance with Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure under Article 17b.

3. A CCP shall call and collect margins on an intraday basis, at least when predefined thresholds are exceeded. In doing so a CCP shall consider the potential impact of its intraday margin collections and payments on the liquidity position of its participants. A CCP shall strive to the best of its ability not to hold intraday variation margin calls after all payments due have been received.';

(32) in Article 44(1), the second subparagraph is replaced by the following :

'A CCP shall measure, on a daily basis, its potential liquidity needs. It shall take into account the liquidity risk generated by the default of at least the two entities, including clearing members or liquidity providers, to which it has the largest exposures.';

(33) Article 46 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. A CCP may accept public guarantees or public bank or commercial bank guarantees, provided that they are unconditionally available upon request within the liquidation period referred to in Article 41. Where bank guarantees are provided to a CCP, that CCP shall take them into account when calculating its exposure to the bank that is also a clearing member. The CCP shall apply adequate haircuts to asset values and guarantees to reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. When revising the level of the haircuts it applies to the assets it accepts as collateral, the CCP shall take into account any potential procyclicality effects of such revisions.';

(b) in paragraph 3, first subparagraph, point (b) is replaced by the following:

'(b) the haircuts referred to in paragraph 1, taking into account the objective to limit their procyclicality; and';

(34) Article 49 is amended as follows:

(a) paragraphs 1 to 1e are replaced by the following:

'1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall obtain independent validation, shall inform its competent authority and ESMA of the results of the tests performed and shall obtain their validation in

accordance with paragraphs 1a, to 1e before adopting any significant change to the models.

The adopted models, including any significant change thereto, shall be subject to an opinion of the college in accordance with this Article.

ESMA shall ensure that information on the results of the stress tests is passed on to the ESAs, the ESCB and the Single Resolution Board to enable them to assess the exposure of financial undertakings to the default of CCPs.

1a. Where a CCP intends to adopt any significant change to the models referred to in paragraph 1, it shall submit an application for authorisation of such change in an electronic format via the central database referred to in Article 17(7) where it shall be immediately shared with the CCP's competent authority, ESMA and the college. The CCP shall enclose an independent validation of the intended change to its application.

Where a CCP considers that the change to the models referred to in paragraph 1 it intends to adopt is not significant as referred to paragraph 1g, the CCP shall request that the application be subject to a non-objection procedure under paragraph 1b. In that case, the CCP may start applying such change before the decision of the CCP's competent authority and ESMA pursuant to paragraph 1b.

The CCP's competent authority shall, in cooperation with ESMA, within 2 working days after such application has been received, acknowledge receipt of the application, confirming to the CCP that it contains the required documents. Where one of them concludes that the application does not contain the required documents, the application shall be rejected.

1b. Within 10 working days of the date referred to in the third subparagraph of paragraph 1a, the competent authority and ESMA shall assess if the proposed change qualifies as a significant change pursuant to paragraph 1g. Where one of them concludes that the change meets one of the conditions referred to in paragraph 1g, the application shall be assessed under paragraphs 1c, 1d and1e and the CCP's competent authority, in cooperation with ESMA, shall inform in writing the applicant CCP thereof.

Where within 10 working days of the date referred to in the third subparagraph of paragraph 1a, the applicant CCP has not been informed in writing that its request for the non-objection procedure to apply has been denied, that change shall be deemed as validated.

Where a request for the non-objection procedure has been denied, the CCP shall, within 5 working days from the notification referred to in the first subparagraph, no longer use that model change. Within 10 working days from that notification, the CCP shall either withdraw the application or complement the application with the independent validation of the change.

1c. Within 30 working days of the date referred to in the third subparagraph of paragraph 1a:

(a) the competent authority shall conduct a risk assessment of the significant change and submit its report to ESMA and the college;

(b) ESMA shall conduct a risk assessment of the significant change and submit its report to the CCP competent authority and the college.

1d. Within 10 working days of receipt of the reports referred to in paragraph 1c, the CCP's competent authority and ESMA shall each adopt a decision, taking into account such reports and inform each other of the decision taken. Where one of them has not validated the change, the validation shall be refused.

1e. Within 5 working days of the decisions being adopted under paragraph 1d, the competent authority and ESMA shall inform the CCP in writing, including a fully reasoned explanation, whether the validation has been granted or refused.

(b) the following paragraphs 1f and 1g are inserted:

1f. The CCP may not adopt any significant change to the models referred to in paragraph 1, before obtaining the validations by its competent authority and ESMA. The competent authority, in agreement with ESMA, may allow for a provisional adoption of a significant change of those models prior to their validations where duly justified due to an emergency situation under Article 24 of this Regulation. Such a temporary change to the models shall only be allowed for a certain period of time jointly specified by the CCP's competent authority and ESMA. After the expiry of this period, the CCP shall not be allowed to use such model change unless it has been approved pursuant to paragraphs 1a, 1c, 1d and 1e.

1g. A change shall be considered as significant where one of following conditions is met:

(a) the change leads to a decrease or increase of the total pre-funded financial resources, including margin requirements, default fund and skin-in-the-game, greater than 15 %;

(b) the structure, structural elements or the margin parameters of the margin model are changed or a margin module is introduced, removed, or amended in a manner which leads to a decrease or increase of this margin module greater than 15 % at the CCP level;

(c) the methodology used to compute portfolio offsets is changed leading to a decrease or increase of the total margin requirements for these financial instruments greater than 10 %;

(d) the methodology for defining and calibrating stress test scenarios for the purpose of determining default fund exposures, is changed, leading to a decrease or increase greater than 20 % of a default fund, or greater than 50 % of any individual default fund contribution;

(e) the methodology applied to assess liquidity risk and monitor concentration risk, is changed, leading to a decrease or increase of the estimated liquidity needs in any currency greater than 20 % or the total liquidity needs greater than 10 %;

(f) the methodology applied to value collateral, calibrate collateral haircut or set concentration limits, is changed, such that the total value of non-cash collateral decreases or increases by more than 10 %; provided that the CCP's proposed change does not fulfil any criteria for the extension of CCP's authorisation specified in Article 2(1);

(g) any other change to the models that could have a material effect on the overall risk of the CCP."

(c) paragraph 5 is replaced by the following:

'5. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that shall accompany

an application for validation pursuant to paragraph 1a and shall specify the information such documents shall contain to demonstrate that the CCP complies with all relevant requirements of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert date =12 months after the date of entry into force of this Regulation]

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(d) the following paragraph 6 is added:

'6. ESMA shall develop draft implementing technical standards specifying the electronic format of the application for validation referred to in paragraph 1a to be submitted to the central database.

ESMA shall submit those draft implementing technical standards to the Commission by… [PO: please insert date = 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(1) in Article 54, paragraph 1 is replaced by the following:

'1. An interoperability arrangement shall be subject to the prior approval of the competent authorities of the CCPs involved. The CCPs' competent authorities shall request the opinion of ESMA in accordance with 24a(7), first subparagraph, point (bc), and the college in accordance with Article 19, and issued in accordance with the procedure set out in Article 17b.';

(2) In Article 82, paragraphs 2 and 3 are replaced by the following:

"2. The power to adopt delegated acts referred to in Articles 1(6), Article 3(5), Article 4(3a), Article 7a(6), Article 17a(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70, Article 72(3), and Article 85(2) shall be conferred to the Commission for an indeterminate period of time.

3. The delegation of power referred to in Article 1(6), Article 3(5), Article 4(3a), Article 7a(6), Article 17a(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70, Article 72(3) and Article 85(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

(3) Article 85 is amended as follows;

(a) paragraph 1 is replaced by the following:

'1. By [PO: please insert the date =5 years after the date of entry into force of this Regulation] the Commission shall assess the application of this Regulation and prepare a general report. The Commission shall submit that report to the

European Parliament and to the Council, together with any appropriate proposals.';

(b) the following paragraph 1b is inserted:

'1b. By [PO: please insert the date = 1 year after the entry into force of this Regulation] ESMA shall submit a report to the Commission on the possibility and feasibility to require the segregation of accounts across the clearing chain of non-financial and financial counterparties. The report shall be accompanied by a cost-benefit analysis.';

(c) paragraph 7 is deleted;

(4) Article 90 is amended as follows:

"By [PO please insert the date = please insert 3 years after the date of entry into force of this Regulation], ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission."

Article 2

Amendments to Regulation (EU) No 575/2013

Article 382 of Regulation (EU) No 575/2013 is amended as follows:

(1) in paragraph 4, point (b) is replaced by the following:

'(b) intragroup transactions entered into with financial counterparties as defined in Article 2, point 8, of Regulation (EU) No 648/2012, financial institutions or ancillary services undertakings that are established in the Union or that are established in a third country that applies prudential and supervisory requirements to those financial counterparties, financial institutions or ancillary services undertakings that are at least equivalent to those applied in the Union, unless Member States adopt national law requiring the structural separation within a banking group, in which case the competent authorities may require those intragroup transactions between the structurally separated entities to be included in the own funds requirements;'

(2) the following paragraph [4c] is inserted:

'[4c]. For the purposes of paragraph 4, point (b), the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

In the absence of such a decision, institutions may until 31 December 2027 continue to exclude the concerned intragroup transactions from the own funds requirements for CVA risk provided that the relevant competent authorities have approved the third country as eligible for that treatment before 31 December 2026. Competent authorities shall notify the EBA of such cases by 31 March 2027.'

Article 3

Amendments to Regulation (EU) 2017/1131

Regulation (EU) 2017/1131 is amended as follows:

(1) in Article 2, the following point (24) is added

‘(24) ‘CCP’ means a legal personas referred to in Article 2 (1) of Regulation (EU) No 648/2012.’;

(2) Article 17 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The aggregate risk exposure to the same counterparty of an MMF stemming from derivative transactions which fulfil the conditions set out in Article 13 and which are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed 5 % of the assets of the MMF.’;

(b) in paragraph 6, first subparagraph, point (c) is replaced by the following:

‘(c) financial derivative instruments that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, giving counterparty risk exposure to that body.’.

Article 4

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

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1.4. Objective(s)

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1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

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1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

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LEGISLATIVE FINANCIAL STATEMENT

FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council amending 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 amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 Text with EEA relevance.

1.2. Policy area(s) concerned

Internal Market – Financial Services.

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action**[40]

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

Promote financial stability and strengthen the Capital Markets Union (CMU).

1.4.2. Specific objective(s)

This proposal has the following specific objectives to achieve the general objectives for the EU internal market for central clearing services:

- Encourage clearing at EU CCPs and reduce excessive reliance on systemic non-EU CCP by building a more attractive and robust EU clearing market.

- Ensure that the supervisory framework for EU CCPs is sufficient to manage the risks associated with the interconnectedness of the EU financial system and increasing clearing volumes, in particular in respect to cross-border risks, as these risks could be further amplified as EU clearing markets grow.

Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposal aims to strengthen the EU clearing market by improving the attractiveness of EU CCPs, encouraging clearing in EU CCPs and enhancing the assessment and management of cross-border risks.

[40] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.3. Indicators of performance

Specify the indicators for monitoring progress and achievements.

For each specific objective the following performance indicators have been set. Improve the attractiveness of EU CCPs:

– Measured by % of contracts cleared by EU clearing participants in EU and third-country CCPs.

– Number of new EU CCP products approved.

– Time taken on average (number of days) to approve new CCP products and validate model changes.

– Number of non-objection procedures completed.

Encourage clearing in EU CCPs:

– Average amounts on active accounts at EU CCPs.

– Transactions cleared in EU CCPs in different currencies (absolute value and compared to global markets).

– Number of clearing members and clients in EU CCPs.

– Volume of contracts cleared outside EU CCPs by EU actors or for EU-currency denominated contracts.

Enhancing the assessment of cross-border risks:

– Number of opinions issued by ESMA per year.

– Number of cases where NCAs deviate from ESMA opinions.

– Number of joint supervisory teams established and tasks performed.

– Number of times ESMA coordinated information requests or asked.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The requirements this proposal aims to meet are to have modern and competitive CCPs in the EU that can attract business while at the same time having safe and resilient EU CCPs and enhance the EU's open strategic autonomy. With the implementation of this proposal including its intended further development in level 2, the requirements are expected – subject to the agreement by the co-legislators – to be absorbed by both the supervisory community as well as the market at the latest by June 2025.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

The EU clearing market is an inseparable part of the EU financial market. As such, EU action should ensure that EU financial market participants do not face too high risks due to the excessive reliance on systemic third-country CCPs where in case of distress, decisions would be taken by third-country authorities prevent the EU from the option to intervene in emergency situations.

Expected generated Union added value (ex-post)

The objectives of EMIR, namely to regulate derivatives transactions, promote financial stability and to make markets more transparent, more standardised, and thus safer, are an essential building block for a successful EU financial internal market, especially regarding the cross – border component. Member States and national supervisors cannot solve on their own or address cross-border risks related to central clearing within the EU or the framework for third-country CCPs.

1.5.3. Lessons learned from similar experiences in the past

This proposal takes into account experiences gained with previous versions of EMIR.

EMIR regulates derivatives transactions, including measures to limit their risks through CCPs. It was adopted in the wake of the 2008/2009 financial crisis to promote financial stability and to make markets more transparent, more standardised, and thus safer. Similar reforms were implemented in most G20 countries. EMIR requires that derivatives transactions are reported to ensure market transparency for regulators and supervisors; and that their risks are appropriately mitigated through centrally clearing at a CCP or exchanging collateral, known as 'margin', in bilateral transactions. CCPs and the risks they manage have grown considerably since the adoption of EMIR.

In 2017, the Commission published two legislative proposals amending EMIR, both adopted by the co-legislators in 2019. EMIR REFIT[41] recalibrated some of the rules to ensure their proportionality, while ensuring financial stability. Acknowledging the emerging issues related to the increasing concentration of risks in CCPs, in particular third-country CCPs, EMIR 2.2[42] revised the supervisory framework and set out a process for assessing the systemic nature of third-country CCPs by ESMA in cooperation with the European Systemic Risk Board (ESRB) and the central banks of issue. EMIR was complemented by the CCP Recovery and Resolution Regulation[43], adopted in 2020, to prepare for the unlikely – though massively impactful - event that an EU CCP faces severe distress. Financial stability is at the core of these pieces of EU legislation. Since 2017, concerns have been repeatedly expressed about the ongoing risks to the EU financial stability arising from the excessive concentration of

41 Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance.); OJ L 141, 28.5.2019, p. 42–63.

42 Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs; OJ L 322, 12.12.2019, p. 1–44.

43 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties, OJ L 22, 22.1.2021, p. 1–102.

clearing in some third-country CCPs, notably the potential risks in a stress scenario. Furthermore, high-risk but low-probability events can happen and the EU must be prepared to face them. While EU CCPs have generally proven resilient throughout these developments, experience has shown that the EU clearing ecosystem can be made stronger, to the benefit of financial stability. However, in order to ensure open strategic autonomy the EU needs to safeguard itself against the risks which can arise when EU market participants are excessively reliant on third-country entities, as this can be a source of vulnerabilities.

The experiences gained with EMIR as outlined above, are taken into account in the design of the new proposed requirements.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

This proposal and its specific requirements are in line with the current arrangements for financial services within the Multiannual Financial Framework (MFF) and aligned with standard practices of putting the EU budget to work and in line with current the Commission services' practices in planning and budgeting for new proposals.

In addition, the objectives of the initiative are consistent with other EU policies and ongoing initiatives that aim to: (i) develop the CMU, and (ii) enhance the efficiency and effectiveness of EU-level supervision, both within and outside the EU.

First, it is consistent with the Commission's ongoing efforts to further develop the Capital Markets Union ('CMU')[44]. The issues addressed by this proposal affect EU financial stability as they obstruct the reduction of excessive exposures to systemic CCPs and constitute a significant impediment to developing an efficient and attractive EU clearing market, a foundation stone for a deep and liquid CMU. The urgency of further developing and integrating EU capital markets was stressed in the Action Plan on CMU of September 2020.

Second, it is consistent with the Commission services' experience with the implementation and enforcement of third-country provisions in EU financial legislation and implements practical experience gained by the Commission services when approaching these tasks in practice.

Third, it is consistent with the EU open strategic autonomy[45] objective.

1.5.5. Assessment of the different available financing options, including scope for redeployment

N/A

[44] Communication from the Commission, A Capital Markets Union for people and businesses – New action plan, COM(2020) 590

[45] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: The European economic and financial system: fostering openness, strength and resilience COM/2021/32 final.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

Implementation with a start-up period from YYYY to YYYY,

followed by full-scale operation.

1.7. Management mode(s) planned[46]

☐ **Direct management** by the Commission

☐ by its departments, including by its staff in the Union delegations;

☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

☐ third countries or the bodies they have designated;

☐ international organisations and their agencies (to be specified);

☐ the EIB and the European Investment Fund;

☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

If more than one management mode is indicated, please provide details in the 'Comments' section.

Comments

N/A

[46] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

In line with already existing arrangements ESMA prepares regular reports on its activity (including internal reporting to Senior Management, Management Board reporting, six month activity reporting to the Board of Supervisors and the production of the annual report), and undergoes audits by the Court of Auditors and the Internal Audit Service on its use of resources. In addition the proposal provides some further monitoring and reporting obligations on ESMA in relation to the new features of the Regulation, including the active account. The Commission shall provide a report 5 years after the Regulation enter into force.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

In relation to the legal, economic, efficient and effective use of appropriations resulting from the proposal, it is expected that the proposal would not bring about new risks that would not be currently covered by an existing internal control framework.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Management and control systems as provided for in the ESMA Regulation are already implemented. ESMA works closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are met in all internal controls areas. These arrangements will apply also with regard to the role of ESMA according to the present proposal. Annual internal audit reports are sent to the Commission, Parliament and Council.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

N/A

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 apply to ESMA without any restrictions. ESMA has acceded to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the

European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and adopt appropriate provisions for all ESMA staff.

The funding decisions and the agreements and the implementing instruments resulting from them explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on the spot checks on the beneficiaries of monies disbursed by ESMA as well as on the staff responsible for allocating these monies.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[47]	from EFTA countries[48]	from candidate countries[49]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

[47] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[48] EFTA: European Free Trade Association.

[49] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

This legislative initiative will have no impact on expenditures for the European Securities and Markets Authority (ESMA) or other bodies of the European Union.

ESMA: The impact assessment identified only moderate additional costs for ESMA, while at the same time the proposed measures create efficiencies that will lead to cost reductions. In addition, some provisions clarify and recalibrate the role of ESMA whilst not constituting new tasks and are therefore to be considered budget neutral.

Costs identified relate to the setting up and operation of a new IT tool for the submission of supervisory documents. However, even though ESMA might incur higher costs related to developing or choosing such a new IT tool as well as operating it, this IT tool will also create efficiencies and ESMA will benefit from those. These efficiencies relate to considerably less manual work in the reconciliation and sharing of documents, the following up on deadlines and questions as well as coordination with national competent authorities (NCAs), the college and the CCP Supervisory Committee. These benefits are likely to outweigh the costs incurred.

Furthermore, initial additional (paper-)work related to the modification of tools and procedures, as well as to enhanced cooperation, may increase costs initially, but is likely to be reduced, or remain stable, over time. Notably, ESMA will be required to draft regulatory / implementing technical standards (RTS/ITS) on the format and content of the documents CCPs are required to submit to supervisory authorities, the specification of the requirement for clearing members and clients to have an active account at a Union CCP, the calculation methodology to be used to calculate the proportion, the scope and details of the reporting by EU clearing members and clients to their competent authorities on their clearing activity in third-country CCPs and whilst providing the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives to also review the scope of the hedging exemption and thresholds for the clearing obligation to apply as well as an annual report on the results of their monitoring activity. In undertaking those activities, ESMA can build on already existing internal processes and procedures, and it may convert, where relevant, those procedures into RTSs/ITSs. In defining the active account requirement, for some already identified instruments, and their ongoing monitoring, ESMA can take into account the work it has undertaken under Article 25(2c) of EMIR when assessing which Tier 2 CCPs' clearing services are of substantial systemic importance to the Union or one or more of its Member States and might therefore only require some very limited additional resources.

Another category to be considered in the cost analysis is the modification of procedures and tools to the new supervisory cooperation framework. The cooperation in joint supervisory teams and the establishment of a joint monitoring mechanism at EU level are new elements in the supervisory framework. However, they are mainly tools to improve the cooperation between authorities and cover tasks that are already, in all essential parts, performed by the authorities, except for the monitoring of the implementation of the requirements set out for active accounts at EU CCPs, such as fees for access charged by CCPs to clients for active accounts. These new structures will likely require some reorganisation of staff and potentially create the need for additional meetings but will not have substantial budgetary

implications. Moreover, the recalibrated supervisory process also comes with benefits, notably clearer responsibilities avoiding unnecessary duplicative work and less work due to the introduction of non-objection procedures which enable ESMA and NCAs to focus on the material aspects of supervision in relation to the extension of clearing services and changes to CCPs' risk models.

The proposed approach towards third-country CCPs that refuse to pay fees to ESMA consists in issuing a public notice after 6 months due and initiate the withdrawal of recognition after 1 year due. This change will be positive in terms of costs. This avoids ESMA from having to invest a considerable amount of work without getting remunerated for it.

In addition, further provisions are introduced which clarify and recalibrate the role of ESMA and are therefore to be considered budget neutral. For instance, ESMA already has the obligation to issue opinions in relation to certain aspects of supervision, however the content of those opinions is recalibrated to ensure a higher degree of efficiency in the supervisory process and ESMA is given a formal opportunity to issue an opinion on CCPs' annual review and evaluation as well as on the withdrawal of their authorisation and to take a clear role in coordinating emergency situations. These are tasks that, in all material respects, relate to their already existing ongoing work and the provisions clarify and therefore strengthen ESMA's position, providing clear responsibilities.

Other European Union bodies: Even though smaller changes to the role of other European Union bodies, such as the European Commission or the European Central Bank, are introduced, they will not have budgetary implications.

3.2.1. Summary of estimated impact on operational appropriations

☒ The proposal/initiative does not require the use of operational appropriations

☐ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	

DG: <…….>			Year **N**[50]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the	**TOTAL**

[50] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

							duration of the impact (see point 1.6)			
• Operational appropriations										
Budget line[51]	Commitments	(1a)								
	Payments	(2a)								
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes[52]										
Budget line		(3)								
TOTAL appropriations for DG <…….>	Commitments	=1a +1b +3								
	Payments	=2a +2b +3								

[51] According to the official budget nomenclature.

[52] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING <….> of the multiannual financial framework	Commitments	=4+6								
	Payments	=5+6								

If more than one operational heading is affected by the proposal / initiative, repeat the section above:

• TOTAL operational appropriations (all operational headings)	Commitments	(4)								
	Payments	(5)								
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)	Commitments	=4+6								
	Payments	=5+6								

Heading of multiannual financial framework	7	‘Administrative expenditure’

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
DG: <…….>									
• Human resources									
• Other administrative expenditure									
TOTAL DG <…….>	Appropriations								

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

	Year	Year	Year	Year	Enter as many years as	**TOTAL**

		N[53]	N+1	N+2	N+3	necessary to show the duration of the impact (see point 1.6)			
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments								
	Payments								

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
⇩	Type[54]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[55]…																		

[53] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

[54] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[55] As described in point 1.4.2. 'Specific objective(s)…'

- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

3.2.3. Summary of estimated impact on administrative appropriations

☒ The proposal/initiative does not require the use of appropriations of an administrative nature

☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **N** [56]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 7 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 7 of the multiannual financial framework								

Outside HEADING 7[57] **of the multiannual financial framework**								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 7 of the multiannual financial framework								

[56] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

[57] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

TOTAL								

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.3.1. Estimated requirements of human resources

☒ The proposal/initiative does not require the use of human resources.

☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
20 01 02 01 (Headquarters and Commission's Representation Offices)							
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
• External staff (in Full Time Equivalent unit: FTE)[58]							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
XX 01 xx **yy zz** [59] - at Headquarters							
XX 01 xx **yy zz** [59] - in Delegations							
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

[58] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

[59] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

☐ requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

The proposal/initiative:

☒ does not provide for co-financing by third parties

☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[60]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[60] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

☒ The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[61]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

[…]

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[61] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

EUROPEAN
COMMISSION

Brussels, 7.12.2022
COM(2022) 698 final

2022/0404 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions

(Text with EEA relevance)

{SEC(2022) 697} - {SWD(2022) 697-698}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal is part of the initiative aimed at ensuring that the EU has a safe, robust and competitive central clearing ecosystem, thereby promoting the Capital Markets Union (CMU) and reinforcing the EU's open strategic autonomy. Robust and safe central counterparties (CCPs) enhance the trust of the financial system and crucially support the liquidity of key markets. A safe, robust and competitive central clearing ecosystem is a pre-condition for it to grow further. The EU central clearing ecosystem should enable EU firms to hedge their risks efficiently and safely, while at the same time safeguarding the wider financial stability. In this way, central clearing will support the EU economy. A competitive and efficient EU central clearing ecosystem will increase clearing activities, but clearing also entails risks by centralising transactions in a few CCPs being financially systemically important. Hence, those risks must be appropriately managed by CCPs and CCPs must continue to be thoroughly supervised both at the national and the wider EU level.

In addition, since 2017, concerns have been repeatedly expressed about the ongoing risks to the EU financial stability arising from the excessive concentration of clearing in some third-country CCPs, notably in a stress scenario. High-risk but low-probability events can happen, and the EU must be prepared to face them[1]. While EU CCPs have generally proven resilient throughout these developments, experience has shown that the EU central clearing ecosystem can be made stronger, to the benefit of financial stability. However, open strategic autonomy also means that the EU needs to safeguard itself against the financial stability risks which can arise when EU market participants are excessively reliant on third-country entities, as this can be a source of vulnerabilities. To overcome this situation, the initiative which this proposal is part of seeks to increase liquidity at EU CCPs, build up the EU's central clearing capacity and reduce the risks posed to the EU financial stability by excessive exposures to third-country CCPs. Consequently, amongst others, it requires all market participants subject to a clearing obligation to hold active accounts at EU CCPs for clearing at least a certain proportion of the services that have been identified by ESMA as of substantial systemic importance for EU financial stability.

Whereas the major part of the legislative measures to enact this package are situated in the Commission proposal for a Regulation amending Regulation (EU) No 648/2012[2] (EMIR), the so-called 'EMIR 3' review, the current proposal holds modifications to Directive 2013/36/EU[3] (Capital Requirements Directive or 'CRD'), Directive (EU) 2019/2034[4]

[1] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee Of The Regions "The European economic and financial system: fostering openness, strength and Resilience", COM(2021) 32.

[2] 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.

[3] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013.

(Investment Firms Directive or 'IFD') and Directive 2009/65/EU[5] (Undertakings for Collective Investment in Transferable Securities Directive or 'UCITS Directive') which are necessary to ensure that the objectives of the EMIR 3 review are achieved as well as to assure coherence. The two proposals should therefore be read in conjunction.

- **Consistency with existing policy provisions in the policy area**

The initiative which this proposal is part of is related to, and consistent with, other EU policies and ongoing initiatives that aim to (i) promote the Capital Markets Union CMU)[6], (ii) reinforce the EU's open strategic autonomy[7] and (iii) enhance the efficiency and effectiveness of EU-level supervision.

This proposal introduces limited amendments to CRD and IFD to encourage institutions and investment firms respectively, as well as their competent authorities, to systematically address any excessive concentration risk that may arise from their exposures towards CCPs, in particular those systemically important third-country CCPs (Tier 2 CCPs) that offer services determined by ESMA as being of substantial systemic importance, reflecting the broader policy objective of an open strategic autonomy in the macro-economic and financial fields by, in particular, but not only, further developing EU financial market infrastructures and increasing their resilience. Increased central clearing at EU CCPs will also contribute to more efficient post-trade arrangements which are the foundations stones of a robust CMU. The proposal also amends the UCITS Directive to eliminate counterparty risk limits for all derivative transactions that are centrally cleared by a CCP that is authorised or recognised under Regulation (EU) No 648/2012, thereby establishing a level playing-field between exchange traded and over-the-counter (OTC) derivatives and better reflecting the risk reducing nature of CCPs in derivative transactions.

- **Consistency with other Union policies**

This initiative should be viewed within the context of the broader Commission agenda to make the EU markets safer, more robust, more efficient and competitive as represented by the CMU and open strategic autonomy initiatives. Safe, efficient and competitive post-trade arrangements, in particular central clearing, are an essential element of robust capital markets. A fully functioning and integrated market for capital will allow the EU's economy to grow in a sustainable way and be more competitive, in line with the strategic priority of the Commission for an Economy that Works for People, focused on creating the right conditions for job creation, growth and investment.

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[4] Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, OJ L 314, 5.12.2019.

[5] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), OJ L 302, 17.11.2009.

[6] Communication from the Commission, 'A Capital Markets Union for people and businesses – New action plan', COM(2020) 590.

[7] Commission Communication, 'The European economic and financial system: fostering openness, strength and resilience', COM(2021) 32.

The initiative in question has no direct and/or identifiable impacts leading to significant harm or affecting the consistency with the climate-neutrality objectives and the obligations arising out of the European Climate Law.[8]

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

CRD, IFD and the UCITS Directive set out the regulatory and supervisory framework for credit institutions, investment firms and UCITS fund respectively, which can make use of the services offered by EU and third-country CCPs. The legal basis for these Directives was Article 53(1) of the Treaty of the Functioning of the European Union (TFEU) as they aimed at coordinating the provisions concerning the taking-up and pursuit of activities of credit institutions, investment firms and UCITS. Considering that this initiative proposes further policy actions to ensure the achievement of these objectives, the related legislative proposal would be adopted under the same legal basis.

• Subsidiarity (for non-exclusive competence)

This proposal is part of the legislative package aimed at enhancing the attractiveness of EU CCPs by facilitating EU CCPs' ability to bring new products to market and reducing compliance costs as well as strengthening EU-level supervision of EU CCPs. EU action will also address the EU's excessive reliance on Tier 2 third-country CCPs in order to reduce the risks to EU financial stability. Safe, robust, efficient and competitive market for central clearing services contributes to deeper, more liquid markets in the EU and is essential for a well-functioning CMU.

This proposal in particular amends CRD and IFD in order to encourage institutions and investment firms respectively, as well as their competent authorities, to systematically address any excessive concentration risk that may arise from their exposures towards CCPs, in particular Tier 2 CCPs, and reflect the broader policy objective of a safer, more robust and competitive central clearing ecosystem in the EU. The proposal also amends the UCITS Directive to eliminate counterparty risk limits for all derivative transactions that are centrally cleared by a CCP that is authorised or recognised under Regulation (EU) No 648/2012, thereby establishing a level playing-field between exchange traded and OTC derivatives and better reflecting the risk reducing nature of CCPs in derivative transactions.

Member States and national supervisors cannot address on their own the systemic risks of highly integrated and interconnected CCPs that operate on a cross-border basis beyond the scope of national jurisdictions. Nor can they mitigate risks arising from diverging national supervisory practices. Member States also cannot on their own incentivise central clearing in the EU and address the inefficiencies of the framework for the cooperation of national supervisors and EU authorities. Therefore, by reason of the scale of actions, these objectives

[8] Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021.

can be better achieved at EU level in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

This proposal introduces limited changes to CRD, IFD and the UCITS Directive to encourage clearing at EU CCPs. The proposal takes full account of the principle of proportionality, being adequate to reach the objectives and not going beyond what is necessary in doing so. It is compatible with the proportionality principle, taking into account the right balance of public interest at stake and the cost-efficiency of the measures proposed. The proportionality of the preferred policy options is further assessed in Chapters 7 and 8 of the accompanying Impact Assessment.

- **Choice of the instrument**

CRD, IFD and the UCITS Directive are Directives and thus they need to be amended by a legal instrument of the same nature.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission services consulted extensively, engaging with a broad range of stakeholders, including EU bodies (ECB, European Systemic Risk Board (ESRB), European Supervisory Authorities (ESAs)), Member States, members of the European Parliament's Economic and Monetary Affairs Committee, the financial services sector (banks, pension funds, investment funds, insurance companies, etc.) as well as non-financial corporates to evaluate whether EMIR sufficiently ensures EU financial stability. This process showed that there are ongoing risks to EU financial stability due to the excessive concentration of clearing in a few third-country CCPs. These risks are particularly relevant in a stress scenario.

Nonetheless, considering the relatively recent entry into force of EMIR 2.2 and the fact that some requirements do not apply yet,[9] the Commission services did not consider it appropriate to prepare a full back-to-back evaluation of the entire framework. Instead, key areas were identified upfront based on stakeholder input and internal analysis (relevant elements are explained in detail in the impact assessment, highlighting the inefficiencies and ineffectiveness of the current rules in the problem definition section (Section 3 of the accompanying Impact Assessment on the problem definition explains in detail the inefficiencies and ineffectiveness of the current rules).

- **Stakeholder consultations**

The Commission has consulted stakeholders throughout the process of preparing the initiative for the EMIR review, which this proposal accompanies. In particular through:

- a Commission targeted consultation between 8 February and 22 March 2022.[10] It was decided that the consultation should be targeted as the questions focused on a very

[9] For example, the regulatory technical standards (RTS) on the procedures for the approval of an extension of services or the approval of changes to risk models under Articles 15 and 49 of EMIR respectively have not been adopted yet.

[10] https://ec.europa.eu/info/business-economy-euro/banking-and-finance/regulatory-process-financial-services/consultations-banking-and-finance/targeted-consultation-review-central-clearing-framework-eu_en

specific and rather technical area. 71 stakeholders responded to the targeted consultation via the online form while some confidential responses were also submitted via email;

- a Commission Call for Evidence between 8 February and 8 March 2022[11];
- consultations of stakeholders through the Working Group on the opportunities and challenges of transferring derivatives from the United Kingdom to the EU, in the first half of 2021 including several stakeholder outreach meetings in February, March and June 2021;
- meeting with Members of the European Parliament on 4 May as well as bilateral meetings subsequently;
- meeting with Member States' experts on 30 March 2022, 16 June 2022 and 8 November 2022;
- meetings of the Financial Services Committee on 2 February and 16 March 2022;
- meetings of the Economic and Financial Committee on 18 February and 29 March 2022;
- bilateral meetings with stakeholders as well as confidential information received from a wide range of stakeholders.

The main messages of this consultative process were:

- Work starting in 2021 showed that improving the attractiveness of central clearing, encouraging the development of EU infrastructures, and the supervisory arrangements in the EU will take time.
- A variety of measures was identified that could help improve the attractiveness of EU CCPs and clearing activities as well as ensure that their risks are appropriately managed and supervised.
- These measures are not only in the remit of the Commission and co-legislators, but also could potentially require actions from the ECB, national central banks, ESAs, national supervisory authorities, CCPs and banks.
- The consultation showed that market participants generally prefer a market driven approach to regulatory measures, to minimise costs and for EU market participants to remain competitive internationally.
- Nevertheless, regulatory measures were supported to a certain extent, especially when allowing for a faster approval process for CCPs' new products and services[12].
- Measures deemed useful to enhance EU CCP's attractiveness were: maintaining an active account with an EU CCP, measures to facilitate expanding services by EU CCPs, broadening the scope of clearing participants, amending hedge accounting rules and enhancing funding and liquidity management conditions for EU CCPs.

The initiative comprises of two legislative proposals that take this stakeholder feedback into account, as well as the feedback received through meetings with a broad range of

[11] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13378-Derivatives-clearing-Review-of-the-European-Market-Infrastructure-Regulation_en

[12] Rather no/limited support regarding higher capital requirements in the CRR for exposures to Tier 2 non-EU CCPs , exposure reduction targets toward specific Tier 2 non- EU CCPs, an obligation to clear in the EU and macroprudential tools.

stakeholders, EU authorities and institutions. It introduces targeted amendments to EMIR, the Capital Requirements Regulation, the Money Market Funds Regulation, CRD, IFD and the UCITS Directive aimed at:

(a) Improving the attractiveness of EU CCPs by simplifying the procedures for launching products and changing models and parameters and introducing a non-objections approval/ex-post approval/review for certain changes. This allows EU CCPs to introduce new products and model changes more quickly while ensuring adequate risk considerations are upheld and without endangering financial stability and therefore making EU CCPs more competitive;

(b) Encouraging central clearing in the EU to safeguard financial stability by requiring clearing members and clients to hold, directly or indirectly, an active account at EU CCPs, and facilitating clearing by clients will help to reduce the exposure to, and with it excessive reliance on, Tier 2 third-country CCPs which is a risk to the financial stability of the EU;

(c) Enhancing the assessment and management of cross-border risk: ensuring that authorities in the EU have adequate powers and information to monitor risks in relation to both EU and third-country CCPs, including by enhancing their supervisory cooperation within the EU.

- **Collection and use of expertise**

In preparing this proposal, the Commission relied on the following external expertise and data, including from ESMA, the ESRB and financial market participants, as presented in detail in the EMIR 3 review proposal which this proposal accompanies.

- **Impact assessment**

The Regulatory Scrutiny Board reviewed the impact assessment for the legislative package this proposal is part of. The impact assessment report, which is described in detail in the EMIR 3 review proposal, which this proposal accompanies, received a positive opinion with reservations from the Regulatory Scrutiny Board on 14 September 2022.

- **Regulatory fitness and simplification**

The initiative aims to enhance the attractiveness of EU CCPs, reduce the excessive reliance of EU market participants on Tier 2 CCPs, safeguard EU financial stability and enhance the EU's open strategic autonomy. As such, and in particular the proposal for this Directive amending CRD, IFD and the UCITS Directive, does not aim at reducing costs per se.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal respects these rights, in particular the economic rights, as listed in the main United Nations conventions on human rights, the Charter of Fundamental Rights of the European Union which is an integral part of the EU Treaties, and the European Convention on Human Rights.

4. BUDGETARY IMPLICATIONS

The proposal for a Directive amending CRD, IFD and the UCITS Directive will not have any impact on the budget of the EU neither does the proposal reviewing EMIR that this proposal complements, as explained in Section 8.2.5. of the impact assessment.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The amendments are tightly interlinked with the EMIR 3 review. Arrangements should therefore be considered in conjunction with those envisaged under that proposal. The Joint Monitoring Mechanism will collect the necessary data for the monitoring of the key metrics (use of active accounts, number of active accounts, proportion of transactions cleared through active accounts, volume and excessive concentration of exposures towards different types of CCPs). This will allow for the future evaluation of the new policy tools. Regular Supervisory Review and Evaluation Process (SREP) and stress testing exercises will also help monitoring the impact of the new proposed measures on affected institutions and investment firms. In particular, this will allow the assessment of the adequacy and proportionality of such measures in the case of smaller institutions and investment firms.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents in relation to its transposition.

- **Detailed explanation of the specific provisions of the proposal**

While UCITS are allowed to invest in both OTC and exchange traded derivatives, the provisions of Article 52 of the UCITS Directive imposed regulatory limits on counterparty risk only to OTC derivative transactions, irrespective of whether the derivatives were centrally cleared. To ensure alignment with Regulation (EU) No 648/2012, to establish a level playing-field between exchange traded and OTC derivatives and to better reflect the risk reducing nature of CCPs in derivative transactions, Article 3(2) of this Directive amends Article 52 of the UCITS Directive to eliminate counterparty risk limits for all derivative transactions that are centrally cleared by a CCP that is authorised or recognised under Regulation (EU) No 648/2012. To introduce the notion of CCP in the UCITS Directive, Article 3(1) of this Directive amends Article 2(1) of the UCTIS Directive to include the definition of CCP by cross-referring to its definition in Regulation (EU) No 648/2012.

This Directive introduces new provisions and proposes amendments to several articles in Directive 2013/36/EU (the Capital Requirements Directive or CRD) and in Directive (EU) 2019/2034 (the Investment Firms Directive or IFD) in order encourage institutions and investment firms, respectively, as well as their competent authorities, to systematically address any excessive concentration risk that may arise from their exposures towards CCPs and reflect the broader policy objective of a safer, more robust, efficient and competitive market for EU central clearing services.

Article 81 of the CRD, in conjunction with Article 104 of the CRD, could already be used under the current framework to address excessive concentration of exposures towards CCPs.

However, the proposed amendments introduce more focus under the CRD on an adequate management of exposures towards CCPs, thus supporting the transition to a safer, more robust, efficient and competitive market for EU central clearing services. They also create the necessary framework in the context of the IFD. In this context, competent authorities are encouraged to review the alignment of credit institutions and investment firms with the relevant Union policy objectives or broader transition trends relating to the use of active account structure under EMIR over the short, medium and long term, thereby enabling competent authorities to address financial stability concerns that could arise from the excessive reliance on certain systemically important third-country CCPs (Tier 2 CCPs).

Article 1(1) and (2) of this Directive amend Articles 74 and 76 of the CRD to require institutions to include concentration risk arising from exposures towards CCPs, in particular those offering services of substantial systemic importance for the Union or one or more of its Member States, in institutions' strategies and processes for evaluating internal capital needs as well as adequate internal governance. A request for the management body to develop concrete plans to address such concentration risks is also introduced in Article 76 of the CRD. Article 2(1) and (2) propose similar amendments to Articles 26 and 29 of the IFD for investment firms.

To support the supervisory review and evaluation process (SREP), Article 1(3) of this Directive amends Article 81 of the CRD to introduce a requirement for competent authorities to specifically assess and monitor institutions' practices concerning the management of their concentration risk arising from exposures towards central counterparties as well as the progress made by institutions in adapting to the relevant policy objectives of the Union. A similar requirement is introduced in Article 36 of the IFD for investment firms via Article 2(3) of this Directive.

Article 1(4) of this Directive amends Article 100 of the CRD mandating the EBA to issue guidelines on the uniform inclusion of concentration risk arising from exposures towards central counterparties in the supervisory stress testing.

Article 1(5) of this Directive amends Article 104 of the CRD to facilitate the possibility for competent authorities to address specifically the concentration risk arising from institutions' exposures towards CCPs, by adding a concrete supervisory power to address such risk. Similar provisions are added in the context of Article 39 of the IFD for investment firms via Article 2(4) of this Directive.

2022/0404 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) To ensure consistency with Regulation (EU) No 648/2012 and to ensure the proper functioning of the internal market, it is necessary to lay down in Directive 2009/65/EU a uniform set of rules to address counterparty risk in derivative transactions performed by undertakings for collective investment in transferable securities (UCITS), where the transactions have been cleared by a CCP that is authorised or recognised under that Regulation. Directive 2009/65/EU imposes regulatory limits on counterparty risk only to OTC derivative transactions, irrespective of whether the derivatives have been centrally cleared. As central clearing arrangements mitigate counterparty risk that is inherent in derivative contracts, it is necessary to take into consideration whether a derivative has been centrally cleared by a CCP that is authorised or recognised under that Regulation and to establish a level playing-field between exchange traded and OTC derivatives, when determining the applicable counterparty risk limits. It is also necessary for regulatory and harmonisation purposes, to lift counterparty risk limits only when the counterparties use CCPs that are authorised in a Member State or recognised, in accordance with Regulation (EU) No 648/2012, to provide clearing services to clearing members and their clients.

(2) To contribute to the objectives of the Capital Markets Union it is necessary, for the efficient use of CCPs, to address certain impediments to the use of central clearing in Directive 2009/65/EU and to provide clarifications in Directives 2013/36/EU, and (EU) 2019/2034. The excessive reliance of the Union financial system on systemically important third-country CCPs (Tier 2 CCPs) could pose financial stability concerns that needs to be addressed appropriately. To ensure the financial stability in the Union and adequately mitigate potential risks of contagion across the Union financial system, appropriate measures should therefore be introduced to foster the identification,

management and monitoring of concentration risk arising from exposures towards CCPs. In that context, Directives 2013/36/EU and (EU) 2019/2034 should be amended to encourage institutions and investment firms to take the necessary steps to adapt their business model to ensure the consistency with the new requirements for clearing introduced by the revision of Regulation (EU) No 648/2012 and to overall enhance their risk management practices, also considering the nature, scope and complexity of their market activities. Whilst competent authorities can already impose additional own funds requirements for risks that are not or not adequately covered by the existing capital requirements, they should be better equipped with additional, more granular, tools and powers under the Pillar 2 to enable them to take suitable and decisive actions based on the conclusions of their supervisory assessments.

(3) Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 should therefore be amended accordingly.

(4) Since the objectives of this Directive, namely ensuring that credit institutions, investment firms and their competent authorities adequately monitor and mitigate the concentration risk arising from exposures towards Tier 2 CCPs which offer services of substantial systemic importance and eliminating counterparty risk limits for derivative transactions that are centrally cleared by a CCP authorised or recognised in accordance with Regulation (EU) No 648/2012 cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) in Article 2(1), the following point (u) is added:

‘(u) ‘central counterparty’ (‘CCP’) means a CCP as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council[*2].

[*2] 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).’;

(2) Article 52 is amended as follows:

(a) in paragraph 1, second subparagraph, the introductory wording is replaced by the following:

‘The risk exposure to a counterparty of the UCITS in a derivative transaction that is not centrally cleared through a CCP authorised in accordance with Article 14 of

Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed either:';

(b) paragraph 2 is amended as follows"

(i) the first subparagraph is replaced by the following:

'Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1to a maximum of 10 %. If they do so, however, the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5 % of its assets shall not exceed 40 % of the value of its assets. That limitation shall not apply to deposits or derivative transactions made with financial institutions subject to prudential supervision.';

(ii) in the second subparagraph, point (c) is replaced by the following:

'(c) exposures arising from derivative transactions that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, undertaken with that body.'.

Article 2

Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(1) in Article 74(1), [point (b)] is replaced by the following:

"[(b)] effective processes to identify, manage, monitor and report the risks they are or might be exposed to in the short, medium and long term time horizon, including environmental, social and governance risks, as well as concentration risk arising from exposures towards central counterparties, taking into account the conditions set out in Article 7a of Regulation (EU) No 648/2012 of the European Parliament and of the Council[*1];"

[*1] 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).';

(2) in Article 76(2), the following subparagraph is added:

'Member States shall ensure that the management body develops specific plans and quantifiable targets in accordance with the proportions set out in accordance with Article 7a of Regulation (EU) No 648/2012 to monitor and address the concentration risk arising from exposures towards central counterparties offering services of substantial systemic importance for the Union or one or more of its Member States.';

(3) in Article 81, the following paragraph is added:

'Competent authorities shall assess and monitor developments of institutions' practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 76(2) of this Directive, as well as the progress made in adapting the institutions' business models

to the relevant policy objectives of the Union, taking into account the requirements set out in Article 7a of Regulation (EU) No 648/2012';

(4) in Article 100, the following paragraph [5] is added:

'[5]. EBA, in accordance with Article 16 of Regulation (EU) No 1093/2010, in coordination with ESMA, in accordance with Article 16 of Regulation (EU) No 1095/2010, shall develop guidelines to ensure a consistent methodology for integrating the concentration risk arising from exposures towards central counterparties in the supervisory stress testing.";

(5) Article 104, (1) is amended as follows:

(a) the introductory wording is replaced by the following:

'For the purposes of Article 97, Article 98(1), point (b), Article 98(4), (5) and (9), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:';

(b) the following point [(n)] is added:

'[(n)] require institutions to reduce exposures towards a central counterparty or to realign exposures across their clearing accounts in accordance with Article 7a of Regulation (EU) No 648/2012, where the competent authority considers there is excessive concentration risk towards that central counterparty.';

Article 3

Amendments to Directive (EU) 2019/2034

Directive (EU) 2019/2034 is amended as follows:

(1) in Article 26(1), point (b) is replaced by the following:

"(b) effective processes to identify, manage, monitor and report the risks that investment firms are or might be exposed to, or the risks that they pose or might pose to others, including concentration risk arising from exposures towards central counterparties, taking into account the conditions set out in Article 7a of Regulation (EU) No 648/2012."

(2) Article 29 (1) is amended as follows:

(a) the following point (e) is added:

'(e) material sources and effects of concentration risk arising from exposures towards central counterparties and any material impact on own funds.';

(b) the following subparagraph is added:

'For the purpose of the first subparagraph, point (e), Member States shall ensure that the management body develops specific plans and quantifiable targets in accordance with the proportions set out in accordance with Article 7a of Regulation (EU) No 648/2012 to monitor and address the concentration risk arising from exposures towards central counterparties offering services of substantial systemic importance for the Union or one or more of its Member States.";

(3) in Article 36(1), the following subparagraph is added:

‘For the purpose of the first subparagraph, point (a), competent authorities shall assess and monitor developments of investment firms’ practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 29(1), point (e), of this Directive as well as the progress made in adapting the investment firms’ business models to the relevant policy objectives of the Union, taking into account the requirements set out in Article 7a of Regulation (EU) No 648/2012.’;

(4) Article 39(2) is amended as follows:

(a) the introductory wording is replaced by the following:

‘For the purposes of Article 29, point (e), Article 36, Article 37(3) and Article 39 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:’;

(b) the following point (n) is added:

‘(n) require institutions to reduce exposures towards a central counterparty or to realign exposures across their clearing accounts in accordance with Article 7a of Regulation (EU) No 648/2012, where the competent authority considers there is excessive concentration risk towards that central counterparty.’;

Article 4

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … [*PO: please insert the date = 12 months after the date of entry into force of the EMIR Review Regulation*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN

EUROPEAN
COMMISSION

Brussels, 7.12.2022
SWD(2022) 697 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT REPORT

Accompanying the documents

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

and

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions

{COM(2022) 697 final} - {SEC(2022) 697 final} - {SWD(2022) 698 final}

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Glossary

Term or acronym	*Meaning or definition*
Authorised CCP/ EU CCP	A CCP established in a Member State and authorised under Regulation (EU) No 648/2012.
BCBS	The Basel Committee on Banking Supervision is the primary global standard setter for the prudential regulation of banks and provides a forum for regular cooperation on banking supervisory matters. Its 45 members are central banks and bank supervisors from 28 jurisdictions.
CBI	Central Bank of Issue
CCP	Central Counterparty
CDS	Credit Default Swaps
CEA	The Commodity Exchange Act regulates the trading of commodity futures in the US.
Central clearing	The process by which a CCP establishes positions, including the calculation of net obligations, and ensures that financial instruments, cash, or both, are available to secure the exposures arising from those positions.
Central Counterparty (CCP)	A legal person interposing itself between the counterparties to contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.
CFTC	The Commodity Futures Trading Commission is an independent agency of the US government that regulates US derivatives markets.
Clearing	The process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from them.
Clearing member/direct participant	An undertaking, typically a large internationally active bank, which participates in a CCP and is responsible for discharging the financial obligations arising from that participation.
Clearing obligation/central clearing obligations	The process by which ESMA determines that certain market participants should clear certain types of OTC derivatives in an EU CCP or in a third-country CCP recognised by ESMA.
Clients	Clients are clients of clearing members, e.g. hedge funds, pensions funds, investment funds, banks, insurance firms, etc. who use clearing members to help clear in a CCP.
CMU	Capital Markets Union
Collateral	An asset or third-party commitment that is used by the collateral provider to secure an obligation to the collateral taker. Collateral arrangements may take different legal forms; collateral may be obtained using the method of title transfer or pledge.
Counterparty credit risk	The risk that a counterparty will not settle an obligation for full value, either when due or at any time thereafter. Credit risk includes pre-settlement risk (replacement cost risk) and settlement risk.
CPMI	The Committee on Payments and Market Infrastructures is an international standard setter that promotes, monitors and makes recommendations about the safety and efficiency of payment, clearing, settlement and related arrangements, thereby supporting financial stability and the wider economy. The CPMI also serves as a forum for central bank cooperation in related oversight, policy and operational matters, including the provision of central bank services.

Credit risk	The risk of a change in value due to actual credit losses deviating from expected credit losses due to the failure to meet contractual debt obligations. Credit risk comprises default and settlement risk. Credit risk can arise on issuers of securities (in a company's investment portfolio), debtors (e.g. mortgagors), counterparties (e.g. derivative contracts or deposits) and intermediaries, to whom the company is exposed.
CRR	Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
DCO	Derivatives Clearing Organization
EMIR	'European Markets Infrastructure Regulation', short for: 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
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pensions Authority
ESAs	European Supervisory Authorities (i.e. EBA, ESMA, EIOPA)
ESCB	European System of Central Banks
ESMA	European Securities and Market Authority
FTE	Full time equivalent
IRD	Interest rate derivatives are financial instruments which value is linked to the movements of an interest rate reference. They may include futures, options, or swaps contracts. Interest rate derivatives are often used as hedges by institutional investors, banks, companies, and individuals to protect themselves against changes in interest rates, but they can also be used to speculate on the evolution of interest rates.
IRS	An interest rate swap is a forward contract in which one stream of future interest payments is exchanged for another based on a specified principal amount. Interest rate swaps usually involve the exchange of a fixed for a floating rate, or vice versa, to reduce or increase exposure to fluctuations in interest rates or to obtain a marginally lower interest rate than would have been possible without the swap.
Implementing Technical Standards (ITSs)	Implementing technical standards are adopted by means of an implementing act pursuant to Article 291 of the Treaty on the Functioning of the European Union (TFEU). ESMA, as the other ESAs, may be entrusted with preparing draft ITSs to be subsequently adopted by the Commission pursuant to the procedure set out in Article 15 of the ESMA Regulation (Regulation (EU) No 1095/2010).
FSB	The Financial Stability Board is an international body that monitors and makes recommendations about the global financial system. It promotes international financial stability; it does so by coordinating national financial authorities and international standard-setting bodies as they work toward developing strong regulatory, supervisory and other financial sector policies. It fosters a level playing field by encouraging coherent implementation of these policies across sectors and jurisdictions. Policies developed in the pursuit of these objectives are implemented by jurisdictions and national authorities.
IOSCO	The International Organization of Securities Commissions is an association of regulators of the world's securities and futures markets. Members are typically primary securities and/or futures regulators in a national jurisdiction or the main financial regulator from each country. Its mandate is to: develop, implement, and promote high standards of regulation to enhance investor protection and reduce systemic risk; share information with exchanges and assist them with technical and operational issues; establish standards to monitoring global investment transactions across borders and markets.

Level 1 act	The term Level 1 act refers to Directives and Regulations adopted by the European Parliament and Council on the basis of a Commission proposal.
Level 2 act	Many level 1 regulations and directives in the area of financial services (so called 'basic acts') contain empowerments for level 2 measures to be adopted by the Commission by means of delegated acts or implementing acts. Delegated acts, as defined in Article 290 TFEU, are acts supplementing or amending certain non-essential elements of a basic act. Implementing acts, as defined in Article 291 TFEU are to be used where uniform conditions for implementing basic acts are required. Where the level 2 measures require the expertise of supervisory experts, it can be determined in the basic act that these measures are technical standards based on drafts developed by the European Supervisory Authorities (see also the terms Regulatory Technical Standards and Implementing Technical Standards).
Legacy trades	Transactions entered into before a given date, typically the entry into force of a Regulation or a given (new) provision.
Margin (initial/variation)	An asset (or third-party commitment) accepted by a counterparty to ensure performance on potential obligations to it or cover market movements on unsettled transactions. '**Initial margin**' means margins collected by the CCP to cover potential future exposure to clearing members providing the margin and, where relevant, interoperable CCPs in the interval between the last margin collection and the liquidation of positions following a default of a clearing member or of an interoperable CCP default. '**Variation margin**' means margins collected or paid out to reflect current exposures resulting from actual changes in market price.
National competent authority (NCA)	The authority/ies designated by each Member State in accordance with Article 22 of EMIR tasked with the authorisation and supervision of EU CCPs established in that Member State.
Non-Financial Counterparty (NFC)	An EU undertaking that is not a CCP or a financial counterparty, as defined in EMIR, Article 2(9). The requirements vary depending on the profile of a NFC. In determining whether an NFC should be subject to the clearing obligation, EMIR considers the purpose for which that NFC uses OTC derivative contracts as well as to the size of the exposures that it has in those instruments. NFCs are subject to the clearing obligation and risk mitigation techniques requirements where their positions in non-hedging OTC derivatives exceed certain thresholds defined by ESMA. These NFCs are known as 'NFC+' as opposed to NFCs below the threshold which are known as 'NFC-'.
OTC	"Over-the-counter" can be used to refer to stocks that trade via a dealer network as opposed to on a regulated market. It also refers to debt securities and other financial instruments such as derivatives, which are traded through a dealer network.
OTC derivative	A derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC.
PSA	Pension Scheme Arrangement
Recognised CCP	A third-country CCP that has been recognised by ESMA in accordance with the procedure and the requirements laid out in EMIR, Article 25.
Regulated market	A multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of Directive 2014/65/EU;
Regulatory	Regulatory Technical Standards are adopted by the Commission by means of a delegated

Technical Standards (RTSs)	act pursuant to Article 290 of the Treaty on the Functioning of the European Union. ESMA, as the other ESAs, may be entrusted with preparing draft RTSs to be subsequently adopted by the Commission pursuant to the procedure set out in Articles 10 to 14 of the ESMA Regulation (Regulation (EU) No 1095/2010).
SSM	The Single Supervisory Mechanism refers to the EU system of banking supervision. It comprises the ECB and the national supervisory authorities of the participating countries. EU banking supervision is one of the two pillars of the EU banking union, along with the Single Resolution Mechanism.
STIR futures	Short-term interest rate derivatives
Systemic risk	The risk that the inability of one participant to meet its obligations in a system will cause other participants to be unable to meet their obligations when they become due, potentially with spill over effects (e.g. liquidity or credit problems) threatening the stability of or confidence in the financial system. That inability to meet obligations can be caused by operational or financial problems.
Third-country CCP	A CCP established outside of the EU.
Tier 1 CCPs	Recognised third-country CCPs that have not been determined as Tier 2 CCPs by ESMA.
Tier 2 CCPs	Recognised third-country CCPs that have been determined by ESMA, pursuant to Article 25(2a), to be, or likely to become, of systemic importance to the financial stability of the EU or one or more of its Member States. Tier 2 CCPs have to comply with certain EMIR requirements and are supervised by ESMA.
Trade repository (TR)	Trade repositories centrally collect and maintain the records of derivatives under Regulation EU No 648/2012 (EMIR). TRs also centrally collect and maintain records of securities financing transactions (SFTs) under Regulation No 2015/2365, on transparency of securities financing transactions and of reuse and amending EMIR (SFTR).
TFEU	Treaty on the Functioning of the European Union

1. INTRODUCTION

This impact assessment concerns a review of the European Market Infrastructure Regulation (EMIR).[1] EMIR regulates derivatives transactions, including measures to limit their risks through central counterparties (CCPs).[2] It was adopted in the wake of the 2008-2009 financial crisis to promote **financial stability** and to make markets more transparent, more standardised, and thus safer. Similar reforms were implemented in most G20 countries. EMIR requires that derivatives transactions are reported to ensure market transparency for regulators and supervisors; and that their risks are appropriately mitigated through centrally clearing at a CCP or exchanging collateral, known as 'margin', in bilateral transactions. CCPs and the risks they manage have grown considerably since the adoption of EMIR. The EU subsequently adapted the banking rules on counterparty credit risk in the Capital Requirements Regulation to grant a preferential capital treatment to exposures to CCPs, reflecting the risk-reducing role of CCPs. Rules on counterparty risk also exist in the frameworks for investment funds[3] and insurance companies[4], however these were not adjusted to fully reflect the role of CCPs.

In 2017, the Commission published two legislative proposals amending EMIR, adopted by the co-legislators in 2019. EMIR REFIT recalibrated some of the rules to ensure their proportionality, while ensuring **financial stability**. Acknowledging the emerging issues related to the increasing concentration of risks in CCPs, in particular third-country CCPs, EMIR 2.2 revised the supervisory framework and set out a process for assessing the systemic nature of third-country CCPs by the European Securities and Markets Authority (ESMA) in cooperation with the European Systemic Risk Board (ESRB) and the central banks of issue. EMIR is complemented by the CCP Recovery and Resolution Regulation, adopted in 2020,[5] to prepare for the unlikely – though massively impactful - event that an EU CCP faces severe distress.[6] Financial stability is at the core of these pieces of EU legislation. This impact assessment should be put in this context.

Since 2017, concerns have been repeatedly expressed about the ongoing risks to the **EU financial stability** arising from the excessive concentration of clearing in some third-country CCPs, notably in the United Kingdom, in a stress scenario. To avoid cliff edge effects related to the withdrawal of the UK from the EU, the Commission adopted a series of equivalence decisions to maintain access to UK CCPs.[7] Therein, the

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1 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.

2 See Annex 7 for a detailed background on derivatives and how CCPs operate within financial markets.

3 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32 – 96.

4 Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 12, 17.1.2015.

5 The Regulation builds on the standards developed by the Financial Stability Board in the aftermath of the financial crisis. See "Key Attributes of Effective Resolution Regimes for Financial Institutions", Financial Stability Board (November 2011) http://www.financialstabilityboard.org/publications/r_111104cc.pdf. Updated in October 2014 with sector-specific annexes http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pd .

6 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132, OJ L 22, 22.1.2021, p. 1–102.

7 Equivalence decisions for UK CCPs (Commission Implementing Decision (EU) 2018/2031 of 19 December 2018, Commission Implementing Decision (EU) 2019/544 of 3 April 2019, Commission

Commission called on market participants to reduce their excessive exposures to systemic CCPs outside the EU. This was reiterated in the Communication on open strategic autonomy in January 2021.[8] But challenges persist to reduce those exposures.

These aspects also emerged in the report on the systemic importance of UK CCPs published by ESMA in December 2021 (henceforth "the 2021 ESMA report on UK CCPs")[9]. That report concluded that some services provided by those CCPs were of such substantial systemic importance that the existing **EMIR 2.2 framework could be insufficient to manage the risks to EU financial stability**.[10] It, however, underlined that the costs of requiring those services to be relocated to the EU would, at present, outweigh the benefits. In addition, a Member of the ECB Executive Board expressed the view that financial markets are more stable when market participants have options for where to clear, and there is room for the EU to further develop its clearing system[11].

The issues identified in this impact assessment affect **EU financial stability** by obstructing the reduction of excessive exposures to systemic CCPs and constitute a significant impediment to developing an efficient and competitive EU clearing market, a cornerstone of a deep and liquid **Capital Markets Union (CMU)**. Risks to financial stability stemming from excessive exposures to third-country entities are a source of vulnerabilities for the EU market and affect the EU's **open strategic autonomy**. A robust clearing alternative within the EU supports the resilience of EU financial markets and contributes to global financial stability, by broadening the clearing options available. As the Commission stated in its Communication on open strategic autonomy, "*the EU is open to global financial markets but **it is ready to protect its interests***".[12] The need to address the risks to EU financial stability due to the EU's overreliance on third-country CCPs was also recognised by the Council, which supported "*current work from the Commission to assess and tackle such excessive reliance, e.g. on third-country central counterparties clearing derivatives*".[13]

At the same time, addressing these issues and facilitating clearing in the EU entails ensuring that the supervisory framework for EU CCPs is sufficient to manage the risks associated with the interconnectedness of the EU financial system and increasing clearing

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Implementing Decision (EU) 2019/2211 of 19 December 2019, Commission Implementing Decision (EU) 2020/1308 of 21 September 2020 and Commission Implementing Decision (EU) 2022/174 of 8 February 2022).

[8] Commission Communication 'The European economic and financial system: fostering openness, strength and resilience', COM/2021/32 final, 19 January 2021.

[9] "Assessment Report under Article 25(2c) of EMIR", ESMA, 16 December 2021. https://www.esma.europa.eu/press-news/esma-news/esma-publishes-results-its-assessment-systemically-important-uk-central (later referred to as "2021 ESMA report on UK CCPs"). National competent authorities responsible for the supervision of financial market participants and CCP supervisors were involved in the adoption of that report through their participation to ESMA's Board of Supervisors (ESMA's decision-making body) and the CCP Supervisory Committee (responsible for preparing the draft report to be adopted by the Board of Supervisors) respectively. ESMA consulted the ESRB, discussed the assessment with the relevant central banks of issue, and reached out to a wide range of market participants.

[10] Ibid; ESMA determined that some clearing services provided by those CCPs are of substantial systemic importance which "*entails that the respective CCP services are assessed to have the potential to negatively impact EU financial stability, even though they are in full compliance with EMIR*".

[11] See speech by F. Panetta, "Building a robust and diversified clearing ecosystem", available at https://www.ecb.europa.eu/press/key/date/2022/html/ecb.sp220322~fb2f159779.en.html.

[12] Commission Communication 'The European economic and financial system: fostering openness, strength and resilience', COM/2021/32 final, 19 January 2021, p. 12.

[13] See Council conclusions on the EU's economic and financial strategic autonomy: one year after the Commission's Communication, paras. 31-32, 5 April 2022.

volumes. **Important cross-border risks and their implications for the wider financial system** could be overlooked under the current arrangements. **These risks could be further amplified as EU clearing markets grow.** Moreover, the current complex and burdensome supervisory system limits the attractiveness of EU CCPs.

This impact assessment assesses **the need to address the potential financial stability risks to the EU due to the continued overreliance on systemic non-EU CCPs and the options to reduce identified risks and vulnerabilities by building a more attractive and robust EU clearing market, which will in turn strengthen the CMU.** It analyses options to address: **supply-side issues**, caused by excessive compliance costs limiting EU CCPs' ability to compete and a lack of capacity, notably in the range of products offered; **demand-side issues**, i.e. limited liquidity and network efficiencies; and the insufficient consideration of **cross-border risks**. Addressing these issues, thereby improving the attractiveness and soundness of EU clearing markets, **will enhance the EU's financial stability.**

2. ECONOMIC, POLITICAL AND LEGAL CONTEXT

2.1. Economic context

CCPs interpose themselves between buyers and sellers and, by way of netting and concentration, reduce the overall credit risk in the system. Concentration of OTC derivatives clearing is driven by the nature of the business, with its low marginal cost, economies of scale and a high premium on liquidity – all of which promote the emergence of large market providers. Since the 2008-2009 financial crisis, the market for centrally-cleared derivatives has expanded in a limited number of CCPs resulting in **heavy concentration** and **high levels of interconnectedness**, and therefore in new risks,[14] linked to the concentration and interconnectedness of those infrastructures across political and monetary jurisdictions.

As of end-June 2021, the outstanding notional of OTC derivatives amounted to EUR 514 trillion, corresponding to 88% of the overall derivatives market.[15] Interest rate derivatives (IRD) represented 80% of outstanding OTC derivatives, of which 60% were cleared through CCPs.[16] At end 2020, UK-based LCH Ltd[17] cleared more than 90% of centrally cleared OTC IRD globally, and more than 80% and 90% of the volume of OTC IRDs denominated in euro and in other EU currencies respectively.[18] The economies of scale (due to netting and diversification benefits) in central clearing lead to significant concentration of the market in a small number of large CCPs. Annex 7 contains information on the role of CCPs and their economic development.

The financial resources of such large CCPs are, however, not unlimited. One severe shock could potentially threaten their viability. Their financial soundness is thus essential to ensure the stability of the entire financial system. A CCP could default for various reasons, e.g. operational failures or unforeseen losses following simultaneous defaults of

[14] Article 5 of EMIR gives the Commission an ongoing mandate for determining the asset classes subject to the clearing obligation.

[15] BIS, OTC derivatives statistics: https://www.bis.org/statistics/derstats.htm.

[16] BIS, OTC derivatives statistics: https://www.bis.org/statistics/derstats.htm.

[17] LCH Ltd is a CCP established in the UK that has been recognised by ESMA and therefore able to provide services to clearing members and trading venues established in the EU. LCH SA is a CCP established in France and authorised under EMIR. LCH Ltd and LCH SA are subsidiaries of the same group, the London Stock Exchange Group (LSEG).

[18] Annex 7 contains information on the role of CCPs and their economic development. See also CEPS, 2021, "Setting EU CCP policy – much more than meets the eye".

several of its members. The knock-on effects could be far-reaching if the CCP were unable to manage the default within its default waterfall. In addition, large banking groups tend to be clearing members in several CCPs, amplifying the systemic effect of their failure. Problems at a large CCP may spread financial contagion, as all major financial institutions are interconnected via direct and indirect links to CCPs.

The cessation of operations of a CCP would deprive market participants of certain basic post-trade functions, entailing the shutdown of entire markets and uncertainty regarding exposures of several market participants with massive knock-on effects. Resolution frameworks, set up to different extents around the world, aim at preserving the continuity of a CCP's critical functions in case of a crisis, to safeguard financial stability.[19]

2.2. Legal context

As seen above, in Section 1.1, the most recent amendment to EMIR aimed at enhancing the supervisory framework for EU and third-country CCPs to ensure EU financial stability,[20] introducing new supervisory arrangements for EU and third-country CCPs.

First, for EU CCPs, national competent authorities (NCAs) continue to have full supervisory powers over CCPs in their Member State, including their ongoing supervision. EMIR has two processes to ensure the cooperation of authorities: consultation of colleges and of ESMA (see Table 3, Annex 5). Colleges were introduced in 2012, bringing together authorities with an interest in CCP operations as voting members[21] or as non-voting members.[22] ESMA has binding mediation powers in certain areas when a negative opinion is adopted. Under EMIR 2.2, the college can also include recommendations in its opinion. Any central bank may "*adopt recommendations relating to the currency it issues*". EMIR 2.2 also increased ESMA's role by empowering it to issue opinions before certain NCA decisions are adopted. The newly established CCP Supervisory Committee (CCP SC) prepares decisions for adoption by the Board of Supervisors and carries out some of ESMA's tasks for EU CCPs.

Second, EMIR 2.2 enhanced the role of ESMA and central banks in relation to recognised third-country CCPs, in particular those classified as systemic (Tier 2 CCPs). In contrast to Tier 1 CCPs (i.e. CCPs that are not systemically important or are not likely to become systemically important), **Tier 2 CCPs have to comply with additional requirements** (including organisational, conduct of business and prudential EMIR requirements) **and are subject to direct supervision by ESMA** in consultation, in some areas, with central banks of issue. Where a Tier 2 CCP infringes the requirements ESMA can impose supervisory measures, including fines, periodic penalty payments and the withdrawal of that CCP's recognition. Currently, ESMA has determined that only LCH Ltd and ICEU, both established in the UK, qualify as Tier 2 CCPs. Where ESMA, in

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19 In the EU, see CCP Recovery and Resolution Regulation (see footnote 6). See also the 2021 ESMA report on UK CCPs (see footnote 9 above), pp. 6-7. ESMA notes that the UK recovery and resolution framework is still under development.

20 Regulation (EU) 2019/2099 of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs, OJ L 322, 12.12.2019, p. 1–44.

21 Including the CCP's national supervisor, the supervisors of the clearing members which are established in the three Member States with the largest contributions to that CCP's default fund, supervisors of market infrastructures to which the CCP is linked, central banks of issue of most relevant currencies cleared and members of the ESCB responsible for the oversight of the CCPs.

22 National supervisors and central banks other than those referred to in footnote 21 may request participation in the college (Article 18(2) of EMIR).

agreement with the central banks of issue and in consultation with the ESRB, considers a third-country CCP or some of its clearing services of substantial systemic importance, it shall recommend that that third-country CCP should not be recognised. The Commission may then require some or all of the clearing services of that CCP to be provided only after it has established itself in the EU.

Experience with the application of the revised EMIR framework has already revealed some shortcomings (see Section 3). A targeted review of EMIR 2.2., in particular on the supervisory arrangements, is required under EMIR (Article 85(7)) by 2 January 2023;[23] this requirement is fulfilled in the context of this initiative. A more comprehensive review of EMIR is required by 2024 under Article 85(1) of EMIR as currently in force.

To address the challenges posed by the growing importance of CCPs and improve the preparedness and the tools to handle the potential crisis of an EU CCP, the EU adopted the CCP Recovery and Resolution Regulation in December 2020. Its aim is to ensure that EU CCPs and national authorities have the means to act decisively in a crisis scenario.[24] The Regulation aims to preserve the critical functions of EU CCPs, ensuring financial stability and protecting taxpayers.

2.3. Political context

In the context of the CMU Action Plans,[25] efficient and competitive post-trade markets, and clearing in particular, can contribute to creating deeper, more liquid, EU markets as post-trade infrastructures are the foundation stones of capital markets. A more centralised approach to supervision is also aimed for, as it supports convergence and better management of cross-border risks.[26] Those goals are consistent with the EU's aim for open strategic autonomy and financial stability, while remaining open to global financial markets. As stressed in the Communication "**The European economic and financial system: fostering openness, strength and resilience**"[27], the EU has a key interest in developing its financial market infrastructures to ensure financial stability and to avoid excessive reliance on the provision of critical services from third countries. The withdrawal of the UK from the single market and its common system of regulation, coordinated supervision and enforcement, coupled with the significant amount of financial instruments in EU currencies cleared by UK CCPs, create major challenges for EU and Member States' authorities in managing financial stability, particularly in times of stress.

The level of exposure of EU clearing participants to UK CCPs is why, from the start of the process of withdrawal of the UK from the EU, central clearing has been seen a sector where financial stability risks could be significant in the event of an abrupt disruption in access to such CCPs by EU participants. To address such risks in the short term, the Commission adopted, in September 2020, a time-limited **equivalence decision for UK CCPs**. In this, market participants were urged to take action and reduce their excessive exposures, in particular their OTC derivative exposures denominated in euro and other EU currencies. ESMA was mandated to assess whether a Tier 2 CCP or some of its

[23] Article 87(7) of EMIR.
[24] See Annex 7 for further explanation.
[25] Commission Communication 'Action Plan on Building a Capital Markets Union', COM/2015/0468 final and Commission Communication 'A Capital Markets Union for people and businesses – New Action Plan', COM/2020/590 final. Commission Communication 'Capital Markets Union - Delivering one year after the Action Plan', COM/2021/720 final.
[26] 2020 CMU Action Plan (see footnote 25), Action 16.
[27] Commission Communication on open strategic autonomy (see footnote 8).

clearing services could be of such substantial systemic importance that that CCP should not be recognised to provide certain clearing services or activities. In December 2021, ESMA identified[28] three clearing services of substantial systemic importance for the EU or one or more Member States, namely LCH Ltd SwapClear for euro and Polish zloty and ICE Clear Europe for CDS and STIR services for euro products. While the assessment concluded that, at present, the costs of derecognising these services would outweigh the benefits, ESMA identified several measures to possibly address the risks arising from the concentration of certain clearing services of UK CCPs. Among these, ESMA proposed to consider adopting appropriate incentives for reducing the size of EU's exposures to Tier 2 CCPs, e.g. requirements for alternative clearing arrangements for clearing members or clients and prudential requirements.

On 10 November 2021, Commissioner McGuinness made a **Statement on the way forward for central clearing**[29]**,** announcing an extension of the equivalence decision for UK CCPs, to avoid the short-term financial stability risks for the EU that an abrupt cut-off from UK CCPs would have put on the EU financial system.[30] It was also acknowledged that time is needed to build clearing capacity in the EU, along with robust supervision, to reduce the EU's excessive exposures and financial stability risks from the overreliance on UK CCPs, as well as manage risks in the EU. This review follows from this statement, identifying the underlying issues, and considering how obstacles could be addressed.

In conclusion, this initiative should be seen in the broader agenda to make EU capital markets more competitive, deeper and resilient, as well as build robust EU clearing capacity to enhance financial stability in the longer term by reducing the risk posed by the excessive exposures towards UK CCPs and the uncertainty related to the protection of the EU interests in times of crisis.

2.4. Consultative process

The Commission has engaged in a broad consultation process in the preparation of this initiative, including a targeted consultation, a call for evidence, the establishment of a Working Group on the opportunities and challenges of transferring derivatives from the UK to the EU as well as meetings with Member States, Members of the European Parliament and various stakeholders, e.g. CCPs, clearing members, investment funds, pension funds. In addition, the Commission considered the 2021 ESMA report on UK CCPs[31] and the ESRB's response to ESMA's consultation[32] (see Annex 2).

Considering the relatively recent entry into force of EMIR 2.2 and the fact that some requirements do not apply yet,[33] it is not considered appropriate to prepare a full back-to-back evaluation of the entire framework. Key areas were identified upfront based on stakeholder input and internal analysis. ESMA's report provides a detailed assessment of Tier 2 CCPs and an evaluation of the relevant provisions. The identified shortcomings

[28] See 2021 ESMA report on UK CCPs (see footnote 9 above).

[29] https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_5905.

[30] EU clearing members would have been off-boarded from UK CCPs with a three-month notice and their remaining positions liquidated in the market.

[31] See 2021 ESMA report on UK CCPs (see footnote 9 above).

[32]. ESRB response to the targeted consultation on the review of the EU central clearing framework, 22 March 2022, https://www.esrb.europa.eu/pub/pdf/other/esrb.letter220323_on_review_central_clearing~c95cf8bae6.en.pdf.

[33] E.g. the regulatory technical standards (RTS) on the procedures for the approval of an extension of services or the approval of changes to risk models under Articles 15 and 49 of EMIR respectively have not been adopted yet.

and conclusions drawn in that report served as one of the main considerations for the problem definition and the policy options presented in this impact assessment. Questions to evaluate the current framework were also put forward in other parts of the consultation process. Furthermore, an evaluation considering all aspects of EMIR, is intended to be introduced in the legislative proposal and should take place at least 5 years after application. The evaluation would seek to collect input from all relevant stakeholders, but particularly CCPs, clearing members and clients. Input would also be sought from ESMA as well as national authorities and central banks. Statistical data for the analysis would be sought primarily from ESMA and the ESRB (please see chapter 9 of this impact assessment for further details).

During the consultation process, data was repeatedly requested from all stakeholders, including in the targeted consultation. The available quantitative data is however limited for several reasons. First, while supervisors and other authorities may have access to quantitative information on market participants, the Commission does not have access to such data directly or indirectly (via NCAs or central banks). Second, despite the Commission's efforts to obtain data through the targeted consultation or bilateral meetings, market participants seem hesitant to share it either due to confidentiality concerns (as they may contain business secrets) or because they lack an incentive to do so. This analysis is thus built on practical experience of, amongst others, EU and third-country CCPs, EU and third-country banks, EU and third-country investment firms, EU and national authorities and central banks, and is primarily qualitative in nature. Quantification is provided where data was provided to the Commission services.

3. PROBLEM DEFINITION

3.1. What are the problems?

Input received from EU and national authorities, as well as market participants,[34] has shown that **risks to the EU's financial stability remain due to the ongoing over-reliance on Tier 2 CCPs. In addition, there is a perceived lack of attractiveness of EU CCPs.** More specifically:

- Member States have called on the Commission to act, underlining that the "*excessive reliance on third-country critical services providers could create financial stability risks in times of financial market disruption*" and that they "*supports current work from the Commission to assess and tackle such excessive reliance, e.g. on third-country central counterparties clearing derivatives*"[35];
- National CCP and market supervisors, who sit in the ESMA's CCP Supervisory Committee and Board of Supervisors, have expressed their concerns in the ESMA 2021 report about the risks stemming from certain clearing services of substantial systemic importance[36].

[34] See Annex 2 for non-confidential feedback to the targeted consultation and meetings with Member States.

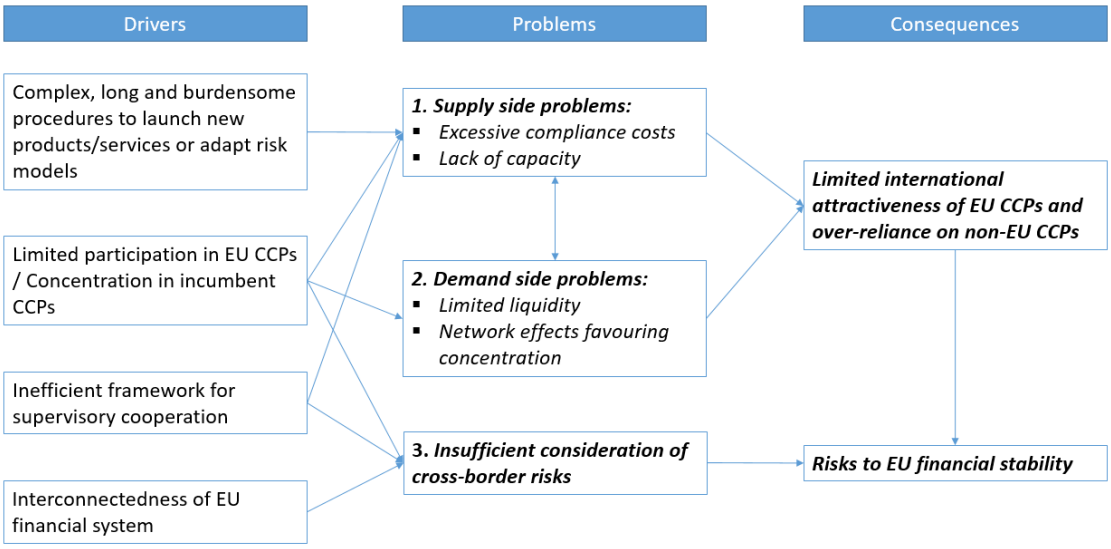
[35] See Council Conclusions of 5 April 2022, see footnote 13.

[36] See 2021 ESMA report on UK CCPs (see footnote 9 above), p 6. "Substantial systemic importance entails that the respective CCP services are assessed to have the potential to negatively impact EU financial stability, even though they are in full compliance with EMIR. Based on the characteristics of each clearing service, and an analysis of scenarios of how they may impact EU financial stability even where the Tier 2 CCPs are in full compliance with EMIR requirements, the assessment concludes that the following clearing services are of substantial systemic importance for the financial stability of the Union or one or more of its Member States:"

- National central banks, via the ESRB, have noted that the reduction in exposures to UK CCPs is essential to ensure financial stability[37]; in addition, national central banks were also consulted prior to the adoption of ESMA's 2021 report on UK CCPs[38].

Extensive consultation (see Annex 2) has highlighted several issues: supply side issues; demand side issues; and insufficient consideration of cross-border risks. These problems are driven by complex and often burdensome procedures, limited participation in EU CCPs/concentration in incumbent CCPs, the interconnectedness of the EU financial system and an inefficient framework for supervisory cooperation.

Figure 1: Problem tree



3.1.1. Supply side problems

While the clearing offer for cash equity market, equity derivatives, bonds or euro-denominated repo meets market participants' demand, the **offer by EU CCPs in some widely used asset classes is not as broad as the one available in some third-country CCPs**. The difference in the services provided by EU CCPs and, e.g. UK CCPs, can be seen in several classes of derivatives: interest rate derivatives, credit default swaps, short-term interest rate derivatives (STIR futures) and commodity derivatives (see Annex 7).

EU CCPs are **hesitant to expand their product offer for two reasons**. First, market participants **tend to clear in incumbent CCPs.** EU CCPs may be hesitant to list additional products if market participants do not commit to using those services. Listing additional products requires IT investments, operational and human resources as well as drafting of methodologies, procedures and risk models. EU CCPs look for reassurance that these development costs will be covered by sufficient demand. But this may not materialise due to the advantage for incumbents in this field – market participants that already clear these products in incumbent CCPs do not have a clear incentive to shift away from them or split their clearing portfolios between several CCPs (See Section 3.2.2). A CCP launching a product already available in another CCP must bring added value for market participants to shift business to that CCP and break the economies of

[37] See ESRB response to the European Commission targeted consultation on the review of the central clearing framework in the EU, 22 March 2022, see footnote 32.

[38] See 2021 ESMA report on UK CCPs (see footnote 9 above), p 6 and 10.

scale and netting efficiencies they benefit from in incumbent CCPs. Second, the regulatory framework and the supervisory arrangements **take too long, are complex and uncertain in their outcome for CCPs to bring new products to the market** or **adapt their models** due to the procedures in Articles 15 and 49 of EMIR respectively. Eight respondents to the targeted consultation, mainly CCPs, stressed their concerns regarding the complexity of the regulatory governance and its procedures. Member States generally agreed with these observations and underlined the lack of efficiency of these procedures, which, in addition, increase costs for CCPs and all stakeholders involved in the clearing process (see Section 3.2.1).

This limits EU CCPs' ability to bring new products and models to market, which is important for EU CCPs to compete internationally.[39] For instance, if the time required for EU CCPs to obtain the relevant authorisation to launch a new product is too long and uncertain, market participants may start clearing elsewhere.[40] If clearing members then use a recognised third-country CCP, in which they are already clearing substantially, this could exacerbate the over-reliance on that CCP, in turn creating risks for the EU financial stability (See Section 3.1.3). A CCP's ability to adapt its models in a reactive and predictable way is also key for market participants when assessing a CCP's performance and its attractiveness.[41] This leads to a circular problem where CCPs are reluctant to expand their services without the commitment of the demand side, while the market is reluctant to commit to other CCPs due to less netting efficiencies, reduced possibility for margin optimisation and the uncertainty in the time to market of different CCP's services.

3.1.2. Demand side problems

Section 3.1.1 shows the connection between the supply and demand side issues. The lack of demand from clearing members and clients is however compounded by several factors: network effects of continuing to clear at incumbent CCPs and insufficient liquidity in EU CCPs.

First, clearing, by nature, favours concentration by providing **economies of scale and netting benefits** (see Section 2.1). Those are obtained by bundling together correlated transactions and applying portfolio margining techniques. Such techniques allow market participants to offset their risks and benefit from up to 80% reduction in the collateral required by the CCP for a given portfolio.[42] Additionally, clearing members and CCPs favour clearing for a wide range of clients in various transaction types[43] to diversify away risk. With more diverse clients, CCPs can more easily face a potential default of a client or a clearing member: the CCP could transfer the positions or sell them in auctions faster and at a lower cost, lowering the risk that the financial resources of other clearing members are needed. Market participants thus prefer to clear in a CCP where a variety of interests are met. To compete with an incumbent CCP, a competitor must attract flows of different natures and not just specific, targeted profiles. Market participants seek

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[39] See European Association of Clearing Houses (EACH) response - ESMA Consultation Paper "Regulatory technical standards on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR" – November 2020.

[40] Confidential information provided to DG FISMA services.

[41] See ISDA, "CCP Best Practices", January 2019, https://www.isda.org/a/cigME/CCP-Best-Practice.pdf.

[42] See Article 41 of EMIR and the corresponding regulatory technical standards.

[43] Participants are not all active on the same maturities or in the same direction, some may have shorter needs or some may want to lock an interest rate over a longer period of time.

reassurance that the risk taken in redirecting some of their clearing flows to another CCP is offset by an opposite interest in that CCP and that the risk profile in the incumbent CCP remains the same. Some CCPs would however state that a vast majority of clients, in particular pension funds and institutional investors, do not operate in a wide range of currencies and do not in practice benefit from complex correlations but would rather benefit from a mono-currency cross-product approach to portfolio margining.[44]

Second, as highlighted by 62% of the respondents to the targeted consultation, is the **insufficient liquidity** at EU CCPs. Liquidity is linked to the number of clearing members and clients of a CCP and the variety and size of their interests/positions, as there has to be a balance between payers and receivers. CCP's liquidity is an important factor for market participants in determining where to clear as in a liquid CCP it is easier to close positions without incurring significant losses, and easier to enter into contracts. Linked to that, in a liquid CCP there are better opportunities to successfully auction out positions of a defaulting clearing member and generally to distribute losses across clearing members if needed, reducing the size of the loss for them. As such, the lower perceived liquidity at EU CCPs is a factor which drives the market to some other recognised third-country CCPs, where liquidity is perceived as greater. This results in dependencies and over-reliance on some third-country CCPs to the financial stability within the EU.

Insufficient liquidity is linked to two main issues. First, **participation in EU CCPs is more limited** than at incumbent third-country CCPs. With a limited participation, liquidity tends to be lower, or is perceived[45] as such. Second, EU CCPs do not offer as broad a range of products/currencies as some third-country CCPs and offer less netting opportunities (see Annex 7). As such, they are seen as less attractive to market participants. As such, , there is a tendency towards **concentration in third-country incumbent CCPs**. This is linked to: strong economies of scale and scope which characterise the clearing business, cost considerations (i.e. the price paid for clearing the same product at a CCP relative to another one, so called "basis"); and a perception that certain third-country CCPs, e.g. LCH Ltd, are operationally more efficient.[46] Persistent concentration of clearing at incumbent third-country CCPs mechanically contributes to lower liquidity in EU CCPs, as market participants continue choosing the same third-country CCPs. These effects are described in more detail in Section 3.2.2.

3.1.3. Insufficient consideration of cross-border risks

One of the main aims of EMIR since its adoption is the mitigation of risks arising from the operation of CCPs in the EU. EMIR 2.2 further developed this framework to mitigate the risks resulting from exposures to third-country CCPs, especially those which are highly interconnected with the EU financial system. However, the supervisory architecture still fails to give due consideration to these cross-border risks and their implications for the financial stability of the EU for three main reasons: concentration of clearing in incumbent third-country CCPs; interconnectedness of the EU financial system; and inefficient cooperation between national authorities.

First, **clearing is highly concentrated in a limited number of clearing service providers globally** (see Section 2.1). When there is significant concentration of clearing in CCPs outside the EU this raises concerns as they, and the large financial stability risk

[44] See Commission Staff Working Document, SWD/2017/0246 final – 2017/0136 (COD), p. 63-65.
[45] Confidential information provided to DG FISMA services.
[46] E.g. successful handling of the Lehman Brothers failure at LCH Ltd is often mentioned as a case in point to confirm the soundness and good performance of the CCP.

they mitigate for the EU, are mainly supervised by third-country authorities which in times of crisis are likely to have divergent interests to those of the EU. For some asset classes, there is only a small number of EU CCPs offering certain services (e.g. only one EU CCP clears credit derivatives and only one EU CCP clears inflation-rate derivatives). Additionally, as shown in Annex 7, for some third-country CCPs' clearing offer there is no substitute, not only in the EU but globally, e.g. LME Ltd in the UK is the only recognised CCP clearing certain commodity derivatives which are vital for non-financial entities. This concentration, where a significant proportion of clearing activities of importance to the EU's financial stability takes place in third-country CCPs thereby creating dependencies for EU market participants (e.g. banks, non-bank financial entities, and non-financial entities) raises concerns.[47]

Financial market infrastructures present potential risks (hence their regulation under EMIR), but those risks are potentially compounded if they are outside the EU. A default or disruption at a non-EU CCP or clearing service with a dominant market share can have substantial destabilising effects on clearing members, their clients or on other financial market infrastructures due to the size of the exposures of EU clearing members and clients, the interconnections with the rest of the financial system, and the lack of alternative clearing services. This can be a source of substantial financial stability risks for the EU or its Member States.

For this reason, the Commission, in 2017 came forward with its EMIR 2.2 proposal to mitigate those risks. Two UK CCPs, LCH Ltd and ICE Clear Europe, were ultimately identified by ESMA as Tier 2 CCPs, implying a higher degree of systemic importance. The UK in particular grew as an important clearing hub over the years and UK CCPs have created such dependencies for EU market participants. Even if EMIR 2.2 aimed at addressing these concerns by requiring them to comply with the relevant EMIR requirements and granting direct supervisory powers to ESMA over Tier 2 CCPs, those CCPs remain, at least primarily, supervised by third-country authorities that are not part of the regulatory, supervisory and enforcement framework which characterises the internal market nor are they bound by the duty of sincere cooperation to which EU and Member State authorities are subject to under Article 4(3) of the Treaty on European Union. The importance of UK CCPs to EU financial stability was highlighted by ESMA in December 2021; where ESMA concluded that the continued recognition of three clearing services offered by two UK CCPs poses substantial systemic risks to the EU's financial stability that are not fully mitigated under EMIR.[48]

Where a CCP or some of its clearing services are considered to be of a substantial systemic importance this can imply greater financial stability risks per se; e.g. where there are changes in the eligible collateral, margins or haircuts this may create feedback loops that negatively impact sovereign bond markets, and more broadly financial stability. In its report[49], ESMA outlines various scenarios in which the EU financial stability may be impacted due to events affecting a Tier 2 CCP. The report highlights that such scenarios may be relevant for EU CCPs as well, however "*the EU regulatory regime provides stronger mitigating factors to address the risks posed by EU CCPs*". Indeed, EU CCPs are under a common regulatory framework, coordinated supervision and the enforcement framework of the single market and Court of Justice of the EU. This entails coordination among authorities, including in case of market stress or crises.

[47] See 2021 ESMA report on UK CCPs (see footnote 9 above).
[48] See 2021 ESMA report on UK CCPs (see footnote 9 above).
[49] See 2021 ESMA report on UK CCPs (see footnote 9 above).

Authorities within the EU are expected to take EU financial stability concerns into account to a greater extent than third-country ones and are subject to the duty of sincere cooperation enshrined in the Treaty on European Union. As Tier 2 CCPs are systemically important financial market infrastructures it is not sufficient to just comply with certain requirements under a regulation, such as EMIR (or to comply with equivalent requirements) to fully mitigate the effects of market stress or crisis. Rather, tools are needed to manage such market stress or crisis in the best possible way to prevent it from spreading through the system. Where a CCP is (or some of its clearing services are) of a substantial systemic importance this becomes even more important as well as difficult.[50]

To mitigate the potentially negative effects in the EU and its Member States, a more balanced risk is needed, to ensure clearing is less concentrated in a few non-EU CCPs. Cooperation could only mitigate risks where the non-EU CCP is not considered a substantially systemic CCP; where it is, cooperation cannot mitigate the effects of decisions taken in a crisis scenario as such decisions will likely primarily have the national financial market in mind, even though they can have a material impact on the EU or some or all of its Member States. In the current framework, in case of financial crisis at a UK CCP, no EU body or authority would be in the driving seat for decisions that can have significant impacts on EU firms.

To conclude, the main issue with the Tier 2 UK CCPs is therefore that they are financial market infrastructures offering services of substantial systemic importance, thus presenting substantial potential risks to the EU. Since the UK withdrawal from the EU, they are also outside the EU common framework, increasing their systemic importance even further as not part of the cooperation framework within the Union. While EMIR requires Tier 2 CCPs to comply with certain provisions of EMIR and provides ESMA with supervisory powers over Tier 2 CCPs, the actual possibility for ESMA to induce change or enforce corrective actions relies on the cooperation of third-country authorities. In addition, supervisors also have more direct access to information over entities located in their jurisdiction.

The situation within the EU derives from very specific circumstances where the UK had established itself as a clearing-hub for the EU before the UK's withdrawal from the EU. The UK used to be part of the EU legal and cooperation framework, but since its withdrawal from the EU, this is no longer the case. With the UK's withdrawal from the EU, the fundamental position of UK has changed, and where any decision before Brexit would have been made taking into account also the interests of the EU, this will not necessarily be the case any more. It is therefore not possible to compare the situation between the UK and the EU globally.

Second, **the EU financial system is largely interconnected**, which may lead to **cross-border risks across Member States**. Analyses show that derivatives and repo exposures for Eurex Clearing and LCH SA regarding clearing members domiciled in the Euro area,

[50] ESMA notes in its report that "*To reduce (i) the substantial systemic importance of LCH Ltd SwapClear, ICEU CDS, and ICEU STIR for the financial stability of the EU or one or more of its Member States and (ii) the identified risks and vulnerabilities linked to the recognition of these clearing services, ESMA is of the opinion that the adoption of appropriate measures and safeguards to mitigate risks should be considered. Given the significance of the risks caused by the lack of supervisory and crisis management powers in times of distress and the size of the exposures of EU clearing participants as explained above, ESMA should after an appropriate period review the clearing services that have been assessed in the assessment against whether introduced measures and safeguards have achieved the desired mitigating effect*". See 2021 ESMA report on UK CCPs (see footnote 9 above).

but not the CCP's home jurisdiction, are comparable to those of clearing members established in the same Member State as those CCPs.[51] CCP links to trading venues established in other Member States also lead to the development of intra-EU exposures and risks. This means that decisions taken by a few national CCP supervisors have an impact which is at least equal over entities established in their Member State and at times even larger on entities (clearing members, clients, institutional investors, etc.) throughout the EU, thereby also possibly impacting the stability of other Member States and the EU at large. Furthermore, it is important to note that under the recently introduced CCP RR Regulation the loss allocation tools in recovery and resolution plans mostly rely on additional resources provided by clearing members and have made the probability of public bailouts more remote.

The EU-wide systemic risk impact of EU CCPs is expected to further rise. The current initiative to improve the attractiveness and capacity of EU CCPs is expected to result in additional flows of clearing activity into the EU and into a limited number of EU CCPs that have the capacity to accommodate such increased flow.[52] This in turn would lead to more cross-border activity in the EU as clearing members and clients from throughout the EU will be using progressively a finite number of EU CCPs. As such, CCPs in individual Member States will become increasingly relevant for the EU financial system as a whole. EU authorities and NCAs across the EU thus need an overview of their activities as the potential financial distress of those CCPs could have a significant impact on clearing members and clients located in other Member States.

Finally, **the framework for supervisory cooperation amongst NCAs for EU CCPs is inefficient and inadequate** leading to insufficient consideration of cross-border risks in the EU. EMIR requires national CCP supervisors to consult colleges and ESMA only in specific cases (see Table 3 in Annex 5 and Section 3.2.4), primarily on the authorisation stage (nb. all EU CCPs are authorised and new market entrants are rare) or when the NCA considers that a significant change in the CCP's operations has taken place (e.g. extension of activities or services or significant change in risk models or parameters). This means that despite the interconnectedness of the EU financial system and the impact that the decisions of a CCP's supervisor can have throughout the EU, as discussed later in this section, ESMA and other national supervisors are only partially involved in the ongoing activities of EU CCPs (e.g. the annual review and evaluation of each CCPs' arrangements, strategies, processes and mechanisms to comply with EMIR as well as the evaluation of the risks, including at least financial and operational risks, it is exposed to).[53] Divergent supervisory practices across the EU (e.g. NCAs' different approaches when a CCP should apply for an extension of its authorisation or for a model validation[54] and, thus, differences when the college and ESMA are consulted) create an unlevel

[51] Confidential information provided to FISMA services.

[52] The volume of these additional flows will depend on a range of different factors including the policy options chosen, their ultimate calibration, as well as other economic and political developments across the globe. See Section 5 for further information on the objectives of this initiative.

[53] Confidential information provided to DG FISMA services stated that there is a risk that, following authorisation, CCP colleges have become a mechanism for the exchange of information, rather than an effective supervisory tool.

[54] E.g. according to confidential information provided to DG FISMA, one national supervisor gave, prior to the entry into force of EMIR 2.2, a "blanket" authorisation to a CCP so no extension of activities under Article 15 of EMIR would be needed. In another case, ESMA and a national supervisor did not agree on whether the change in models proposed by a CCP was significant (and deserved an Article 49 of EMIR validation); the college agreed with the national supervisor.

playing field leading to risks of regulatory and supervisory arbitrage for CCPs and indirectly for their clearing members and clients.

For example, there are 14 EU CCPs (see Annex 5); in 2021 ESMA was only asked six times to issue an opinion on NCAs' draft decisions and none submitted decisions for ESMA's opinion voluntarily.[55] Moreover, three out of these six cases included recommendations to the NCAs for implementation by the CCP either immediately or in a certain timeframe. ESMA, however, has no means of knowing or ensuring whether these are followed[56] (beyond voluntary feedback by the NCA) or of informing interested parties that its recommendations have not been applied, thereby limiting supervisory convergence in the EU. While the diversity of the college membership is an asset as it is representative of the clearing ecosystem, certain stakeholders noted that colleges have limited added value as they in principle agree with the assessment of NCAs – at times even deciding not to agree with the recommendations proposed by ESMA.[57] Since the entry into force of EMIR 2.2, in principle only one college meeting per CCP has been held per year and for a limited number of CCPs, no college meeting has been held in a given year.[58] ESMA has also observed some heterogeneity in the degree of participation of different college members[59].

The involvement of central banks of issue in the supervision of EU CCPs is also limited (i.e. in colleges and as non-voting members of the CCP Supervisory Committee when the latter discusses EU market developments and stress tests), despite the importance of CCPs for the conduct of monetary policy and the functioning of payment systems.

The length of procedures for extending services or activities, as well as changes to a CCP's models also raises financial stability concerns (see also Section 3.1.1). Many changes on risk parameters and methodologies should be approved swiftly by NCAs and ESMA to increase CCPs' resilience. However, the way Article 49 of EMIR is applied may lead to a rise in the risks that CCPs face if the proposed changes are not applied in time (see Section 3.2.1). For example, during a market stress period in 2022, one CCP noted that, based on their back-testing procedure, the margins requested in one of their products were insufficient and decided to change the model inputs.[60] Even though the Article 49(1e) of EMIR procedure was applied (provisional validation – see Section 3.2.1), it still took four weeks from the moment the CCP informed the authorities of the change to its approval. A default during those four weeks would have put the market unnecessarily at risk due to a known issue.

3.2. What are the problem drivers?

3.2.1. Complex, lengthy, and burdensome procedures

When an EU CCP wishes to **extend the activities and services** it offers (Article 15 of EMIR[61]), and/or to **make significant changes to its risk models and model parameters**

[55] E.g. in areas not required under EMIR. ESMA Confidential Report, EMIR 2.2 staffing and resources, para. 30.

[56] Based on confidential information provided to DG FISMA services, in two cases, for example, national supervisors did not take into account the ESMA recommendations.

[57] Confidential information provided to DG FISMA services.

[58] Confidential information provided to DG FISMA services.

[59] ESMA review of CCP colleges under EMIR (2015/20), https://www.esma.europa.eu/document/esma-review-ccp-colleges-under-emir, para. 32.

[60] Confidential information provided to DG FISMA services.

[61] Article 15 EMIR sets out the procedure under which an EU CCP can extend its services or activities. An extension of the authorisation follows the same procedure as that for authorising a CCP (Article 17).

(Article 49 of EMIR) that CCP often faces complex, lengthy and burdensome procedures interacting with their supervisors and the other bodies involved in their supervision under EMIR due to how the processes are structured. This affects the ability of EU CCPs to compete, **limiting their attractiveness**, and is a source of **excessive compliance costs** for them (see Section 3.1.1) and is the result of both the relevant EMIR provisions themselves as well as how they are applied by national authorities and ESMA.

The vast majority of stakeholders responding to the targeted consultation (90%, i.e. 20 out of 22 respondents to that section) supported the idea of improving the ability of EU CCPs to be competitive by expanding their offer and speeding up the approval process for new products. Respondents (mainly CCPs, but also two business associations, a central bank and a national supervisory authority of a Member State) highlighted that in particular the long EMIR approval process to launch new products had negative consequences on EU CCPs' competitiveness. They considered the existing governance as well as the requested documentation too complex and pointed to a lack of clear timelines. Three public authorities agreed that there is room for a faster approval process for certain initiatives. Other respondents, notably banks, agreed that it is crucial that EU CCPs are able to increase their offer to make it comparable to the offer of non-EU CCPs.[62] ESMA also notes that improvements in the framework are desirable.[63] In the meeting with Member States on 16 June 2022, Member States agreed in general that procedures under Article 15 and 49 EMIR should be more efficient and the processes improved[64].

The current approval times for an extension of services or activities by EU CCPs are concerning as they significantly lengthen time-to-market, especially as EU CCPs are looking to expand their clearing offer to compete. For example, the procedures for a CCP to extend their services are set out in Article 15 of EMIR, however these procedures are only triggered once the application has been declared complete. It is understood from stakeholders, that the time taken for an application to be declared complete makes up the largest part of the process. Sometimes it takes several months to get the approvals **for launching a service or activity**[65] (on average, 8.5 months since EMIR 2.2 was adopted, with timeframes ranging from 3 to 15 months after an application has been declared complete[66]). One CCP noted that the process from submission of the first application took more than 2 years.[67] Reportedly, such delays are due to lengthy interactions with the NCA when the latter assesses if a new initiative is an "extension of authorisation" or not, and when the authority assesses the CCP's application[68] to determine its completeness.[69]

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62 See section 3.4.1. of the Summary Report of the Targeted Consultation on the Review of the Central Clearing Framework in the European Union ("EMIR"), hereinafter "Summary Report of 2022 EMIR Targeted Consultation".

63 ESMA response to the European Commission's targeted consultation on the review of the EU central clearing framework, ESMA91-372-21251, April 2022, https://www.esma.europa.eu/sites/default/files/library/esma91-372-2125_letter_chair_esma_response_to_ec_consultation_on_targeted_emir_review.pdf, paras. 94 ff.

64 See Annex 2, Minutes Meeting with Member States on 16 June 2022.

65 Confidential information provided to FISMA services.

66 According to confidential information provided to FISMA services.

67 Confidential information provided to DG FISMA services.

68 According to confidential information provided to FISMA services, interactions with a NCA in the initial phase to launch a new initiative needs the CCP to assess the initiative against all EMIR articles, with multiple questions and answers sessions with the NCA, leading to a self-assessment of more than 60 A3 pages and evidence amounting to more than 130 documents.

69 EACH response - ESMA Consultation Paper "Regulatory technical standards on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial

In practice, an NCA can ask the CCP for additional information without an ultimate deadline which can lead to indefinite delays for the review of the application[70]. CCPs have asked for more clarity from the beginning on what documents/information are exactly expected,[71] while other stakeholders believe the observed delays are due to overly complex supervisory processes and inefficient interactions between national supervisors, colleges and ESMA.[72]

Similar concerns were raised by market participants on the length and complexity of procedures for validating **significant changes to CCPs' risk models and model parameters** under Article 49 of EMIR.[73] EMIR 2.2 amended the process to try to simplify the procedure. In the event, the end result is multiple consecutive procedures, lengthening the time taken to obtain model approval significantly. This procedure requires validations by the NCA, ESMA and an independent party, as well as an opinion of the college.[74] As such, it may take from several months up to 2.5 years[75] (7.1 months on average since EMIR 2.2 was adopted) to obtain such validations. This leads to high compliance costs and to potentially even higher opportunity costs due to lost revenues because products cannot be offered on time and impacts on the resilience of EU CCPs due to the significant time needed to bring new products to clearing participants and to adopt new or amended risk models. As noted, these problems derive from different identified issues, including that a CCP may be asked to submit documents several times and the respective procedures vary based on which authorities are involved, but also due to uncertainty on certain aspects of the validation process: e.g. stakeholders perceive a lack of clarity on what documentation that has to be provided when applying for a new approval or validation.[76] In addition, stakeholders noted that even a decision whether a change is material or not (and hence should be subject to the procedure of Article 49 of EMIR) may take weeks.[77]

To ensure timely management of its risks and avoid procyclical behaviour,[78] it is important for a CCP to quickly adapt, e.g. the models according to which it seizes its default fund, to adjust its models for margin calculation to changes in market volatility or in reaction to the tests performed on the models themselves. For example, in times of stress, CCPs may need to adjust model parameters quickly, so that such parameters actually reflect market dynamics that are important for a proper calculation of margins and thus for risk management.

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authorisation and conditions under which changes to the models and parameters are significant under EMIR", November 2020.

70 Confidential information provided to DG FISMA services.

71 Confidential information provided to DG FISMA services.

72 Confidential information provided to DG FISMA services.

73 Confidential information provided to DG FISMA services.

74 Significant changes to a CCP's models and parameters need to be validated by the CCP's NCA and ESMA, after validation by an independent party (Article 49 of EMIR); they are also subject to a college opinion, to which the NCA and ESMA submit a report based on a risk assessment. EMIR 2.2 required ESMA to develop draft technical standards specifying the conditions under which changes to a CCP's models and parameters are "significant"; under these draft standards (published in March 2021) the college is also required to issue an opinion as to whether a change should be considered "significant".

75 Confidential information provided to DG FISMA services.

76 See Summary Report 2022 EMIR Targeted Consultation (see footnote 48).

77 Confidential information provided to DG FISMA services.

78 See responses to ESMA's Consultation Paper "Regulatory technical standards on conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and conditions under which changes to the models and parameters are significant under EMIR", https://www.esma.europa.eu/press-news/consultations/public-consultation-article-15-and-49-emir.

EMIR has a "faster" procedure (i.e. a provisional validation procedure) for changes to risk models and parameters where justified (Article 49(1e) of EMIR). As its scope is, however, considered unclear and limited, it has not been used much in practice (e.g. NCAs are unsure or reluctant to approve changes).[79] Moreover, market participants noted that this process does not reduce the burden for small and incremental improvements to CCPs' risk management capabilities, including under the proposed regulatory technical standards.[80] Market participants say, in essence, that that procedure is used as an emergency measure but not to facilitate or expedite the overall validation process.[81] Finally, even for cases where provisional validations have been agreed, the lack of deadlines and process for the subsequent validation of the model changes poses concerns of level playing field across CCPs and potential regulatory arbitrage.

The burdensome and lengthy procedures required for CCPs to extend their services or activities (Article 15 of EMIR) and for model validations (Article 49 of EMIR) also, as indicated above, lead to **compliance costs** arising from, amongst others the need to get external legal advice, engage consultants and use significant internal resources, e.g.:[82] (a) **legal counsel fees:** from EUR 150 000 to EUR 250 000 (Article 15 of EMIR procedure); between EUR 10 000 and EUR 50 000 (Article 49 of EMIR procedure) for medium and complex model changes; (b) **external consultant fees**: the independent validation costs for an Article 49 of EMIR procedure range from EUR 25 000 to EUR 150 000. For Articles 15 and 49 procedures, CCPs may need external consultants, the costs for which may range between EUR 200 000 and EUR 350 000. Depending on the length of the approval procedure, those costs may increase; (c) **internal CCP resources**: CCPs employ 4 to 6 full time equivalents (FTEs) to work on these procedures, but in some cases as many as 13 FTEs were required. Internal costs may be from EUR 200 000 to EUR 300 000. Staff dedicated to the projects for longer periods may also impact the conduct of other activities**; (d) application fees for Articles 15 and 49 procedures:** CCPs may have to pay fees to their NCAs. These range for Article 15 from, e.g. a fixed fee of EUR 50 000 in one Member State to a variable fee ranging from EUR 8 352 to EUR 723 836 in another. Similarly, for Article 49, the fee also varies; e.g. there is a fixed fee of EUR 50 000 in one Member State and a variable fee ranging from EUR 8 352 to EUR 361 918 in another.

Other costs for CCPs include the opportunity cost of lost revenue from a new service; increased risk if the change was to strengthen the risk management model (see also Section 3.1.3); increased operational risk if the service was to improve the efficiency and automation of the process; risk of changes to the law and the impossibility to adjust its rules during the process; and the cost of internal process support.[83]

These costs are often also passed through to clearing members and, subsequently, their clients. First, they generally translate into a higher cost of clearing for clearing members and clients; they also face prolonged uncertainty and additional implementation costs (including adapting their IT systems) due to their inability to plan with confidence around launch dates of new products over an extended period as these are often aligned with CCPs. A delay in the provision of services or in certain updates by CCPs may also lead to more costs for clients if they need to use other CCPs for the respective product, and

[79] Confidential information provided to DG FISMA services.
[80] Confidential information provided to DG FISMA services
[81] Confidential information provided to DG FISMA services.
[82] All figures, except for point (d) are based on confidential information provided to DG FISMA services.
[83] Confidential information provided to DG FISMA services.

thus maintain dual CCP set-ups. Also, in case of changes of operating systems, procedures and contracts with customers[84] need to be changed every time.

Finally, in other jurisdictions the time required for CCPs to extend their services or to amend models is significantly shorter and the costs substantially smaller. In the US,[85] for example, a CFTC registered CCP may implement a new rule or amendment in 10 business days after a written self-certification to the CFTC that the rule or change complies with the Commodity Exchange Act and CFTC Regulations. In certain circumstances, the CFTC can extend this period, but this seems rare.[86] It has also been noted that the underlying documentation can be easily provided (sometimes in hours). The CFTC requires every amendment to be filed, regardless of its relevance from a risk perspective or if it relates to the license of the CCP. This means a CCP may need about 50 filings a year. Nonetheless, the estimated cost burden remains lower than under EMIR; even the cost of an extended procedure with the CFTC is estimated to be 25-50% lower than that under EMIR.[87] In the meeting with Member States on 16 June 2022, three Member States suggested to further look into ways that would allow CCPs to launch new products. However, Member States' experts pointed to the need to carefully frame such approaches. One Member State particularly highlighted that this option should only be available if non-systemic risks are concerned.

In the UK, EMIR has been onboarded into UK law following the withdrawal of the UK from the European Union.[88] While procedures are therefore the same as in the EU, UK CCPs had built up a significant position in the global clearing market already before the introduction of the EMIR requirements. In addition, since Brexit, UK CCPs have only one supervisor and there is no need to involve authorities from other Member States or refer to a supranational authority such as ESMA, rending the decision-making process simpler and potentially faster.

Due to these differences, third-country CCPs established in some jurisdictions are able to adapt faster to market developments, thus having a potential advantage over EU CCPs.

3.2.2. Limited participation in EU CCPs and concentration in incumbent CCPs

Participation in UK-based CCPs by EU clearing members and clients is greater than that in EU CCPs, as shown in Section 2.1.

As more participants bring more transactions to CCPs, differences in participation lead to greater **liquidity** at UK CCPs than at EU CCPs, which in turn undermines the attractiveness of EU CCPs as clearing participants consider that liquidity ensures an effective market with less volatility, tighter spreads and more stable prices and the ability to unwind positions at the lowest possible cost if need be.[89] In turn, the more limited demand for clearing services at EU CCPs acts as a disincentive to develop and broaden their **product offering,** contributing to the demand and supply-side problems.

There are three main **reasons** why the bulk of the activity in interest rate derivatives of EU clearing members and clients takes place in UK CCPs:

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84 Confidential information provided to DG FISMA services.

85 See ESMA's Final Report "Technical advice on third country regulatory equivalence under EMIR – US", 1 September 2013, https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-1157_technical_advice_on_third_country_regulatory_equivalence_under_emir_us.pdf , p. 9 - 11.

86 Confidential information provided to DG FISMA services.

87 Confidential information provided to DG FISMA services.

88 See https://www.fca.org.uk/markets/uk-emir/library.

89 As advocated in the responses to the targeted consultation, see e.g. ABN AMRO Clearing.

First, clearing tends to be a **concentrated business**, based on economies of scale and scope: the greater the netting opportunities provided by a given CCP, the more it is attractive as a location for clearing. Portfolio netting through CCPs allows both parties to hold lower margins – either by bulking together the same type of products (e.g. interest rate swaps) referencing different currencies (**cross-currency margining)**, or by grouping together different products (e.g. interest rate swaps, interest rate futures and repos) denominated in the same currency (**cross-product margining)**. Most CCPs provide portfolio margining services based on cross-currency correlations, while some CCPs, e.g. some EU ones competing in interest rate derivatives, provide portfolio margining based on cross-product correlations.[90] For example, LCH Ltd offers netting opportunities for the same product across different currencies, while Eurex Clearing offers netting in the same currency but across different products. Cross-currency and cross-product margining are allowed under EMIR. These different approaches make it difficult for clearing members and clients to compare the different CCPs', e.g. netting efficiency.

Netting possibilities give rise to significant network effects which drive market participants to pool their clearing activities in one CCP. As mentioned by most banks acting as direct clearing members in the targeted consultation, the **netting advantage in terms of reduced margin requirements is a much more decisive factor for market participants' choice of a CCP than the respective direct costs of clearing**.

Second, stakeholders stated that the **operational efficiency** of a CCP was a key factor in their choices where to clear.[91] In this regard, it has been mentioned that EU CCPs should improve the procedures to accept new participants to make them comparable to those offered of non-EU CCPs. All things equal, if it takes double the time for a given participant to finalise all the checks and paperwork to access an EU CCP than it would take to access a non-EU CCP offering the same services, that participant is likely to favour the CCP where it is easier and faster to start clearing. Also, some stakeholders mentioned that greater efficiency is needed in the procedures which are now in place to ensure that, in case a clearing member defaults, its clients' positions are successfully transferred to another clearing member.[92]

Third, considerations around **liquidity** are also key in driving participation as the more liquidity in a given CCP, the cheaper it is to clear in it, all things equal.

In the meeting with Member States on 30 March 2022, Member States generally supported the overall objective to reduce exposures to Tier 2 CCPs, with three asking for more analysis on the stability risks.

3.2.3. Interconnectedness of EU financial system

CCPs operating in the EU are highly interconnected through a range of channels.

First, **CCPs are interconnected via their clearing members**. Many of the largest global banks are members of multiple CCPs, illustrating the potential for contagion. For example, BNP Paribas is a member of at least five EU CCPs. In addition, some clearing members are particularly dominant in a given CCP as illustrated in Figure 2 below.

Another way to highlight the degree of interconnectedness between market participants in the OTC derivatives market is to focus on "who trades with whom". The ESRB

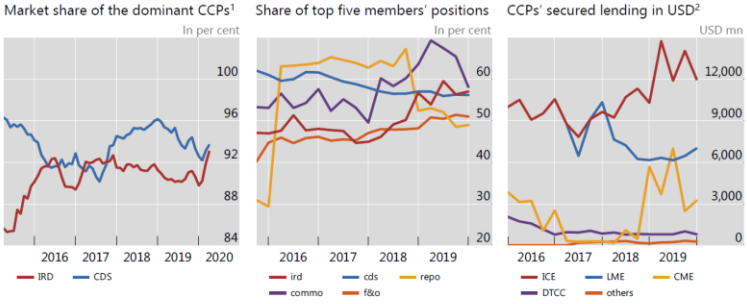
[90] See Commission Staff Working Document, SWD/2017/0246 final – 2017/0136 (COD), p. 63-65.

[91] See Annex 2.

[92] E.g. successful handling of the Lehman Brothers failure at LCH Ltd is often mentioned as a case in point to confirm the soundness and good performance of the CCP.

published a paper in September 2016 illustrating the network structure of the OTC derivatives market through a visualisation of the outstanding interest-rate swap (IRS) positions in the market.[93] The study shows that CCPs, big clearing members (referred to as G16 dealers[94]) and banks, are connected to a lot of counterparties, with many connections between them, suggesting a high potential for system-wide contagion. This indicates the central role of CCPs and the importance of client and indirect clearing through the clearing members, as the latter serve as "gateways to clearing" for buy-side counterparties and create interconnections between CCPs and the wider system.

Figure 2 - CCP-bank nexus: highly concentrated banks and CCPs interact closely[95]



[1] The dominant CCP in IRD is LCH and that in CDS is ICE. The market share is calculated as the share of the cleared volume in the dominant CCP in the total cleared volume collected in Clarus CCPview. [2] Secured cash deposited at commercial banks, including reverse repos.

Sources: CCP quantitative disclosure; ClarusFT; authors' calculations.

Second**, CCPs can be interconnected via so-called interoperability arrangements** which allow clearing members of one CCP to clear securities and money market transactions with clearing members of another CCP. This is the case for EuroCCP, LCH Ltd. and SIX x-clear in various equities markets, for LCH S.A. (established in France) and Euronext Clearing (established in Italy) in various bond markets.[96]

Finally, as shown in ESMA's 2020 stress test report[97] **CCPs are connected through liquidity providers and custodians**.[98] If CCPs were to trigger their committed or uncommitted liquidity lines[99] at the same time due to a major market stress, it is possible that those "commitments" cannot be fulfilled altogether or that pressure is put on the liquidity providers to grant liquidity to CCPs in one jurisdiction over another. For custodians, the dependency can be characterised as a "one-to-many": a custodian's failure is likely to have a repercussion over all CCPs using its services.

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93 https://www.esrb.europa.eu/pub/pdf/occasional/20160922_occasional_paper_11.en.pdf .

94 The group of G16 dealers includes Bank of America, Barclays, BNP Paribas, Citigroup, Crédit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan Chase, Morgan Stanley, Nomura, Royal Bank of Scotland, Société Générale, UBS, and Wells Fargo.

95 BIS Bulletin No 13, 11 May 2020.

96 A description of the interoperability arrangements existing in the EU and their functioning is available at the ESRB Report, "CCP interoperability arrangements", January 2019, https://www.esrb.europa.eu/pub/pdf/reports/esrb.report190131_CCP_interoperability_arrangements~99908a78e7.en.pdf . See also ESMA, Final report, Possible systemic risk and cost implications of interoperability arrangements, 1 March 2016, ESMA/2016/328, https://www.esma.europa.eu/sites/default/files/library/2016-328.pdf. A table of EU interoperability arrangements and the products, trading venues and Central Securities Depositories and Security Settlement Systems affected can be found in the annex (p. 30 to 33).

97 https://www.esma.europa.eu/press-news/esma-news/esma%E2%80%99s-third-eu-wide-ccp-stress-test-finds-system-resilient-shocks .

98 See right-hand panel of Figure 4, i.e. end-2019 ICE Group had around USD 12.5 billion in secured cash deposited at commercial banks, mostly reverse repos.

99 Most jurisdictions, including the EU, do not require CCPs to have committed liquidity arrangements only that they establish a robust liquidity risk management framework.

The various degrees of interconnectedness of CCPs are partly addressed through the supervisory structure enshrined in EMIR as amended by EMIR 2.2. This framework allows for supervisors of clearing members, CSDs, trading venues or other CCPs linked with an interoperability link to be informed of developments and potential risks stemming from a particular CCP (see Sections 2.2 and 3.1.3). This supervisory structure allows for ESMA and, to a lesser extent, the central banks of issue to foster the harmonisation of practices across NCAs. Recent events, e.g. the Covid crisis of 2020 or the war in Ukraine in 2022, have hit markets in a shock. While CCPs have proven to be resilient, supervisors and policy makers were partially blind as to the potential weaknesses experienced by clearing members, clients or CCPs, lacking an eagle-eye view on the market and suffering from a lack of information from third-country jurisdictions but also across Member States in the EU. It is thus beneficial to strengthen the EU-level insight into cross-border risks which can emerge in such scenarios, as the powers and tasks granted to ESMA and the central banks under the current framework do not appear sufficient in such cases, and could therefore be made more effective. In particular, recent events have shown the importance of strengthening the EU-level authorities' role in coordinating responses and gathering the overview of risks beyond the national level in emergency situations. Other jurisdictions, such as the US or Japan, have put in place other mechanisms to protect themselves from financial stability risks from the interconnectedness of their own financial systems, including, e.g. a more expansive approach to supervision (see Section 3.3.2). This illustrates the fact that the issue is widespread, albeit different in nature, and cannot be adequately addressed by international standards.

3.2.4. Inefficient framework for supervisory cooperation

Despite the amendments introduced relating to the supervision of EU CCPs following the adoption of EMIR 2.2 (see Section 2.2), the framework for supervisory cooperation remains inefficient. First, multiple actors are involved at multiple levels (EU and national) in the adoption of decisions on the same supervisory issues, leading to duplication of assessments, longer procedures (see Section 3.2.1) and increasing compliance costs (see Section 3.1.1). Second, NCAs need ESMA's opinion before adopting a limited number of supervisory decisions, leading to divergent supervisory approaches and an insufficient consideration of cross-border risks (see Section 3.1.3). Third, central banks of issue are insufficiently involved on EU CCP supervisory matters that are of direct relevance to the conduct of monetary policy and the smooth operation of payments systems, leading to insufficient consideration of cross-border risks (see Section 3.1.3). According to ESMA, this creates a "*complex, inconsistent and sometimes duplicative system resulting in long procedures and possible uncertainties regarding the expected outcome of supervisory processes*"[100].

Regarding the first two points, EMIR 2.2 introduced a structure where while NCAs remain responsible for the adoption of supervisory decisions, for some supervisory issues, the opinion of ESMA or the college (or, in certain cases, both) are required (see Table 3, Annex 5). In practice, this means that for a new application by a CCP: the home NCA needs to prepare a risk assessment of the CCP and a draft decision; the ESMA CCP Supervisory Committee is then asked to adopt a draft Opinion on the NCA's decision where necessary to promote a consistent and coherent application of the EMIR

[100] ESMA response to the Commission targeted consultation, para. 100, 1 April 2022, https://www.esma.europa.eu/sites/default/files/library/esma91-372-2125_letter_chair_esma_response_to_ec_consultation_on_targeted_emir_review.pdf

requirement concerned by the application; and the college is asked to adopt an Opinion determining whether the applicant CCP complies with all the requirements under EMIR. While ESMA's Board of Supervisors, the CCP Supervisory Committee, and the college have each a different composition which partially justifies the requirement to consult all these bodies, the current structure leads to inefficient cooperation **as the same matters are discussed in three fora. This effectively increases costs** for the authorities involved and for CCPs (see Section 3.2.1).

NCAs do not have to consult ESMA or other NCAs on most supervisory decisions and hence get little input on potential cross-border impacts of their decisions. This raises financial stability concerns (see Section 3.1.3) and inconsistencies as, e.g. ESMA is consulted on a limited number of areas, any recommendations are non-binding, market participants are generally not aware that the NCA or the CCP in question has elected not to implement them. Similarly, there is no effective mechanism to ensure that a similar approach is adopted by all NCAs.

On the third point, central banks' involvement in EU CCP supervision is limited (see Section 2.2) despite the direct impact of CCP's activities on the implementation of monetary policy and the smooth operation of payment systems (as basic tasks entrusted to the European System of Central Banks under the Treaty on the Functioning of the EU (TFEU) (Article 127(2)). In addition, there are inconsistencies in the involvement of central banks in the supervision of EU and third-country CCPs. While for third-country CCPs, central banks can participate as non-voting members to all discussions of the CCP Supervisory Committee, for EU CCPs they do so only in two instances: EU-wide CCP stress tests and the discussion of market developments concerning EU CCPs. In addition, central banks are not involved in the adoption of many decisions that affect EU CCPs (which the EU legislators explicitly acknowledged as of direct relevance to them), i.e. liquidity risk controls and four key areas with embedded liquidity risk, namely margin requirements, collateral, settlement and approval of interoperability arrangements. The lack of input from central banks in these areas makes the cooperation between supervisors less efficient and hinders the full assessment of the cross-border risks raised by EU CCPs' activities from a central bank of issue perspective. It is also a concern as adequate CCP self-insurance against liquidity risk is a prerequisite for central banks to consider any potential requests for access to central bank liquidity. Considering as well that the risk implications of EU CCPs for EU currencies are expected to further rise with the envisaged growth of central clearing in the EU, it should be assessed how the role of central banks of issue in the monitoring and supervision of EU CCPs could be potentially enhanced.

The vast majority of stakeholders replying to the targeted consultation (90%, i.e. 20 out of 22 respondents) supported the idea of improving the ability of EU CCPs expand their offer and speeding up the approval process for new products. Respondents (mainly CCPs, but also two business associations, a central bank and a national supervisory authority of a Member State) expressed concerns about the governance as well as the requested documentation, which were viewed as too complex with unclear timelines, resulting in high regulatory compliance costs were high. Three public authorities agreed that there is room for a faster approval process for certain initiatives. In the meeting with Member States on 16 June 2022, Member States agreed in general that procedures under Article 15 and 49 EMIR should be more efficient and the processes improved.

3.3. How likely is the problem to persist?

This section considers the potential impacts if no measures are taken to address the identified problems. For the purposes of the analysis, it is assumed that equivalence for the UK remains until it expires on 30 June 2025: as such, it is assumed that the regulatory framework of the UK will remain aligned with EMIR until 2025. In such a scenario, which presents the baseline scenario for the assessment of options (see Section 6.1), the problems are likely to remain, and indeed, even grow. Market participants will continue to clear in incumbent Tier 2 CCPs, and where liquidity in EU CCPs is likely to remain unchanged. Consequently, absent any intervention, the over-reliance on non-EU CCPs will continue and cross-border risks will rise not just in the EU financial sector but also in the wider economy. Relying on existing tools, such as capital buffers for banks, would not address the problems to a sufficient extent: even though it is possible to address excessive concentration of exposures towards CCPs under the current banking framework, such tools are not sufficiently prominent to induce the desired behavioural change.

3.3.1. Limited attractiveness of EU CCPs and over-reliance on non-EU CCPs

The limited international attractiveness of EU CCPs and over-reliance on non-EU CCPs stem from two main problems: supply-side problems (see Section 3.1.1) and demand-side problems (see Section 3.1.2).

As regards **supply-side problems**, if nothing is done EU CCPs will continue to face long, burdensome and complex procedures when trying to launch new products or services. This will limit their ability to respond quickly to market developments, bring new products to the market and meet the demands of market participants. As long as, amongst other things, EU CCPs are perceived by market participants as less able to quickly offer solutions to specific needs than third-country CCPs recognised by ESMA, market participants will continue to clear at non-EU CCPss. EU CCPs will also continue to be less able to respond quickly to market developments through changes in risk models. CCPs established in jurisdictions where this can happen more quickly are likely to be better able to attract business. The options below therefore explore how to facilitate a quicker provision of new services and adaptations of models by EU CCPs.

As regards **demand-side problems** (see Section 3.1.2), clearing is a concentrated industry where economies of scale matter and where market participants tend to clear their trades at the same CCP to gain from operational and margin efficiencies. The problem tree also shows the circular relationship between supply and demand at a given CCP. In this regard, in several Communications, as well as in the equivalence decisions adopted to avoid cliff-edge Brexit scenario,[101] the Commission urged EU market participants to reduce their excessive exposures to Tier 2 CCPs, but such calls have led to limited results. Participants continue clearing mostly in non-EU CCPs and, while a certain amount of short-term interest rate derivatives have seen higher volumes in the EU, the bulk of the exposure remains outside of the EU.[102] Absent any uptake in the liquidity at EU CCPs, market participants would be unlikely to shift their positions inside the EU substantially.

[101] See Communication on open strategic autonomy (see footnote 8), equivalence decisions for UK CCPs (see footnote 7).

[102] A rebalancing of positions between LCH Ltd and Eurex has been observed over recent years, but they mostly concern short dated, low risk interest rate derivatives e.g. Forward Rates Agreements, and not riskier long-dated interest rate swaps (or at least to a much lesser extent).

Market participants claimed that EU CCPs do not offer a sufficiently wide range of products to compete effectively with non-EU CCPs. EU CCPs in turn claimed that, absent any firm interest and commitment to shift business inside the EU, the return on investment would not be certain enough to take the risk to launch new products, also given the substantial sunk costs of the procedures to extend services. Market participants also stated that it would not be efficient and cost-effective for them to split their portfolios between two or more CCPs offering the same products and that the incentive to move should solely be based on an economic interest to do so.

The central clearing obligation will apply to Pension Scheme Arrangements (PSAs) from June 2023, as provided for under EMIR.[103] This will broaden the clearing base and would benefit EU CCPs if PSAs clear in the EU. However, PSAs that already clear on a voluntary basis do so in greater proportion at UK CCPs at the moment, like the rest of the market.[104] Absent regulatory intervention, PSAs are likely to continue clearing to a greater extent in the UK than in the EU, in spite of efforts made by EU CCPs in recent years to step up their offer to facilitate clearing by these entities.

All in all, **absent any changes, exposures to third-country CCPs are likely to increase, presenting increasing risks to the EU's financial stability in the medium term. In essence, the problems identified, and thus the risks stemming from the excessive exposure to third-country CCPs, are likely to worsen.**

3.3.2. Risks to EU financial stability

Risks to financial stability stem from the level of exposure and the insufficient consideration of cross-border risks (see Section 3.1.3). Absent any regulatory intervention, cross-border risks would rise in the EU financial sector but also in the wider economy.

In the case of non-EU CCPs, the risks of inaction for financial stability are twofold. First, in a stress scenario, e.g. due to the default of clearing members or operational failures[105], involving a non-EU CCP on which EU clients and clearing members rely to a high degree, certain consequences have been identified by ESMA, *"In times of crisis, changes to the eligible collateral, margins or haircuts may create feedback loops that negatively impact sovereign bond markets of one or more Member States, and more broadly the EU financial stability. Disruptions in markets relevant to monetary policy implementation may hamper the transmission mechanism critical to CBIs. During recovery and resolution events, the Tier 2 CCPs, or the UK resolution authority, may take discretionary measures directly adversely impacting EU clearing members"*.[106] Similar aspects were highlighted by the ESRB.[107] In its report, ESMA further outlines

[103] According to Articles 89(1) and 85(2) of EMIR.

[104] See ESMA Letter to the Commission on "Clearing obligation for pension scheme arrangements", 25 January 2022.

[105] CEPS mentions 16 episodes of clearing member defaults between 1985 and 2018 in various countries around the world. See https://www.ceps.eu/ceps-publications/setting-eu-ccp-policy-much-more-than-meets-the-eye/.

[106] See 2021 ESMA report on UK CCPs (see footnote 9 above), p. 6.

[107] See ESRB response to the targeted consultation on the review of the EU central clearing framework (see footnote 25): "*the main risks to financial stability associated with continued recognition of these clearing services relate to a situation where a UK CCP offering the service(s) (i) takes procyclical measures during a period of market strain or (ii) enters into a recovery phase or, ultimately, into resolution. The ESRB therefore proposed in its response to ESMA that any extension of the recognition of the two UK Tier 2 CCPs should be temporary and should go hand in hand with measures designed to reduce risks to financial stability. These measures would, for example, be designed to increase the offer of clearing solutions from*

various scenarios in which the EU financial stability may be impacted due to events affecting a Tier 2 CCP (see also Section 3.1.3). The report highlights that such scenarios may be relevant for EU CCPs as well, however "*the EU regulatory regime provides stronger mitigating factors to address the risks posed by EU CCPs*"[108].

Hence, even though Tier 2 CCPs are supervised by ESMA, any enforcement of supervisory decisions relies on the cooperation of the foreign supervisor to enforce such supervisory decisions.[109] In addition, ESMA has no formal powers as regards Tier 2 CCPs crisis management . Additionally, third-country authorities are not part of the EU common regulatory, supervisory and enforcement framework (i.e. they are not subject to the Court of Justice of the EU nor bound by its interpretation of EU law), with the related potential consequences in terms of coordination. Supervisors also have more direct access to information over entities located in their jurisdiction. In the current framework, in case of crisis at a UK CCP, no EU body or authority would be in the driving seat for decisions that could have significant impacts on EU firms.

Second, the over-reliance on non-EU CCPs creates an unsustainable dependency – if the critical services provided by those CCPs become unavailable, there is in some cases no viable substitute, inside or outside the EU. For example, for the three services provided by the Tier 2 CCPs which were identified as of substantial systemic importance, ESMA noted that "*The three CCP services identified as being of substantial systemic importance perform functions critical to EU market participants. They support capital formation, risk transition, central risk management and market liquidity in interest rate and credit markets through their provision of clearing services to EU banks, investment funds, insurance companies, pension funds and corporates. The large dependencies of the EU stem from the size of the clearing services, in combination with their interconnectedness with EU clearing members and clients in multiple Member States, their dominant nature, and the current lack of viable alternatives. In addition, they are of relevance for financial stability in the EU and for EUR monetary policy implementation, with SwapClear services for PLN interest rate derivatives being relevant for the financial stability in Poland*".[110] Importantly, in ESMA's assessment the existing alternatives to LCH Ltd (within EU and in another third country) are expected to only partially be able to take over LCH Ltd's role at present.[111]

In the case of EU CCPs, under the baseline scenario they remain mainly supervised by their NCA and there is an identified insufficient consideration of cross-border risks. The college and ESMA are involved, but they can only influence the supervision of EU CCPs to a limited extent. As shown in Section 3.2.4, the current framework for supervisory cooperation in the EU remains complex and at times inefficient or inconsistent. This is sub-optimal in terms of the ability of the EU supervisory system to properly identify and oversee cross-border risks, including the risks which cut across the clearing ecosystem with its multiple actors.

Absent any changes, exposures to third-country CCPs are likely to rise, presenting more risks to the EU's financial stability. **In essence, the problems identified are likely to worsen as exposures to third-country CCPs continue to rise.** Risks could

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EU CCPs, thus enabling EU authorities to achieve a gradual reduction in exposures of EU clearing members to Tier 2 CCPs".

[108] See 2021 ESMA report on UK CCPs (see footnote 9 above), p. 35.

[109] See 2021 ESMA report on UK CCPs (see footnote 9 above).

[110] See 2021 ESMA report on UK CCPs (see footnote 9 above), p.6.

[111] See 2021 ESMA report on UK CCPs (see footnote 9 above), p. 46.

even rise further should UK authorities decide to diverge from the current regulatory framework.

The level of exposure to UK CCPs by EU market participants is without precedent however the issue of reliance to foreign entities are considered by other countries where **different jurisdictions have chosen different ways** to implement the international principles for financial market infrastructures in their legal frameworks. Within these frameworks, they have also opted to manage their exposure to foreign entities to protect their financial and economic system from undue risks, but the type and nature of the risks faced varies considerably between jurisdictions. US market participants are active at UK CCPs such as LCH Ltd, which holds a substantial market share also in the clearing market for certain US dollar-denominated products. However, in contrast to the EU, the US reliance on UK CCPs is lower[112] and US CCPs offer a sizeable clearing alternative. The US also has strict rules under which, for example, all CCPs which wish to provide services to US firms must be directly registered and supervised by the CFTC. Interestingly, the proportion of US dollar-denominated interest rate derivatives cleared in US CCPs vs. UK CCPs varies significantly over time, minimising the arguments brought forward by market participants that having two CCPs competing on the same asset class creates inefficiencies and undue fragmentation.[113] In Japan, Yen-denominated interest rate derivatives entered into by Japanese financial institutions and subject to the clearing obligation are mostly cleared at the local CCP[114].

4. WHY SHOULD THE EU ACT?

4.1. Legal basis

EMIR sets out the regulatory and supervisory framework for CCPs established in the EU and third-country CCPs that provide clearing services to clearing members or trading venues established in the EU. The legal basis for EMIR is Article 114 of the TFEU as it aims at establishing common rules for OTC derivatives, CCPs and trade repositories to avoid divergent national measures or practices and obstacles to the proper functioning of the internal market while ensuring financial stability. Considering that this initiative proposes further policy actions to ensure the achievement of these objectives, the related legislative proposal would be adopted under the same legal basis.

4.2. Subsidiarity: Necessity of EU action

The problems identified (Section 3.1) cannot be addressed by Member States acting alone and necessitate EU action. The review could amend certain provisions of EMIR, in particular to enhance the attractiveness of EU CCPs by facilitating their ability to bring new products to market and reducing compliance costs, strengthening EU-level supervision of EU CCPs and incentivising clearing in the EU. EU action would therefore lead to reducing our over-reliance on third-country CCPs and thus limit the risks to EU financial stability. Efficient and competitive clearing markets contribute to deeper, more

[112] For example, in terms of clearing of USD interest rate swaps, the balance between LCH Ltd in the UK and CME in the US stood at around 55% vs 45% over the period 2014-2016. See BIS Working Paper No. 826, "The cost of clearing fragmentation", 2019.

[113] Confidential information provided to DG FISMA services.

[114] According to CEPS, the majority of JPY IRS (63%, in terms of notional traded) are cleared by CCPs located in the Asia-Pacific region (mainly the Japanese CCP), with only 20% cleared in UK CCPs, particularly LCH's SwapClear. See CEPS, 2021, "Setting EU CCP policy – much more than meets the eye".

liquid markets in the EU and are one of the foundation stones for the development of the CMU.

4.3. Subsidiarity: Added value of EU action

Member States and national supervisors cannot solve on their own the systemic risks of highly integrated and interconnected CCPs that operate on a cross-border basis beyond the scope of national jurisdictions or mitigate risks arising from diverging national supervisory practices. Member States cannot on their own enhance the attractiveness of EU CCPs, incentivise clearing in the EU and address the inefficiencies of the framework for the cooperation of national supervisors and EU authorities. As such, EMIR aims to increase the safety and efficiency of CCPs in the single market while ensuring financial stability and this cannot be sufficiently achieved by Member States, as the co-legislators acknowledged in 2012 when adopting EMIR (and in 2019 when adopting EMIR REFIT and EMIR 2.2). Therefore, by reason of the scale of actions, these objectives can be better achieved at EU level in accordance with the principle of subsidiarity as set out in Article 5 of the TEU.

5. OBJECTIVES: WHAT IS TO BE ACHIEVED?

5.1. General objectives

The general objective of EMIR is to reduce systemic risk by increasing the safety and efficiency of the OTC derivatives market within the EU and globally. The general objective of this initiative is therefore to reduce the over-reliance on Tier 2 CCPs to address the potential risks to the EU financial stability, as highlighted in ESMA's 2021 report on UK CCPs (see Section 3.3.2). The policy options should provide incentives for market participants to clear in EU CCPs and adjust their exposures to Tier 2 CCPs to the point where over time, EU CCPs have built up sufficient capacity. This would help address the financial stability risks identified, including by ESMA, and would offer a credible and rapid way to on-shore the activities of those CCPs in case of need. In parallel, the policy options should ensure that those EU CCPs are attractive and appropriately supervised.

The aim would be to reduce the excessive exposures to a level where the "substantial" systemic importance, as identified by ESMA in its report, achieves a level where the framework set out in EMIR to manage risks from third-country CCPs is sufficient to preserve the EU's financial stability. This means at least bringing the CCPs in question to a Tier 2 category within EMIR, and not exceeding that as it is currently the case for some clearing services. The announcement of these measures should already prompt market participants to take action, which will help reduce exposures before 2025. .

The overarching policy objective can be achieved by pursuing the following specific objectives: enhance the attractiveness of EU CCPs, by making it easier to bring new products to market and reducing compliance costs; encourage clearing in EU CCPs; and enhance the assessment and management of cross-border risks.

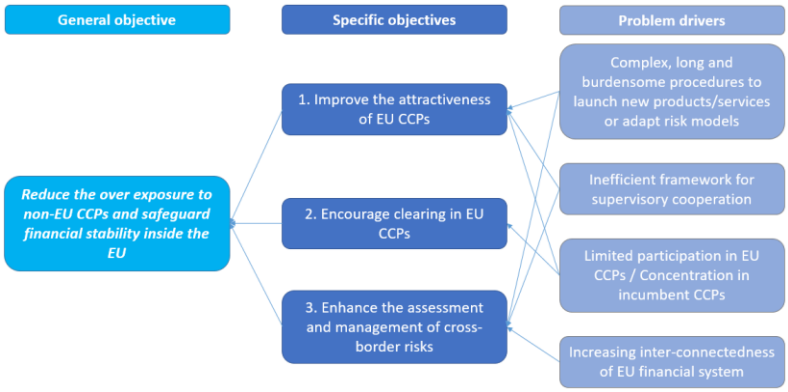
In ESMA's conclusion, that certain clearing services are currently of substantial systemic importance for the financial stability of the EU or one or more of its Member States, the measures to be taken to mitigate this were also considered. ESMA is required to assess under Article 25(2c) EMIR if a CCP or some of its clearing services are of such substantial systemic importance that that CCP should not be recognised to provide certain clearing services. As part of this, ESMA concluded that a potential non-recognition with a shorter transition period, would be disruptive for all three clearing services, maximising transfer costs including the cost of breaking netting sets. ESMA

noted that a longer adaptation period would reduce this cliff-edge effect, helping to minimise costs for EU market participants. It would also provide time to incentivise a move to EU CCPs, e.g. EU CCPs will be able to widen their product offering.

Hence, whilst EU clients benefit from efficient clearing today, it comes at a cost, and a potential significant cost in the future. Uncovered financial risk is not a visible daily cost but could materialise in a stress scenario. This would be detrimental to the entities clearing as the costs for a defaulting CCP will be borne by clearing members and clients, without EU supervisors being able to manage those effects. The alternative is equally detrimental to clearing members and clients, notably if ESMA in reassessing the situation concludes that the clearing services identified in their 2021 report are still considered of substantially systemic importance, and recommends such clearing services not to be recognised.

Achieving the objectives set out below would help adjust the balance of costs and benefits for market participants,[115] reducing excessive exposures to a level where the framework for third-country CCPs introduced by EMIR 2.2 may be considered sufficient to mitigate risks to the EU's financial stability while preserving access to global clearing in combination with adequate access to clearing through competitive EU clearing members. This should be achieved to the largest extent possible by June 2025, when the current equivalence decision for UK CCPs expires. It is envisaged that market participants anticipate the implementation and start preparing in advance. Many banks, for example, already have accounts established at EU CCPs in order to anticipate Commission and ESMA decisions, as such, it is likely that the market will not wait for the full legal implementation of the proposed measures (including, e.g. the application of any level 2 acts) to clear more in EU CCPs. Furthermore, efficient and resilient derivatives markets are essential for the functioning of CMU, an important building block of an economy that works for people, in line with the Commission's strategic priorities.

Figure 3: objectives tree



5.2. Specific objectives

There are three specific objectives, relating to the four problem drivers:

- Improve the attractiveness of EU CCPs: CCPs are catalysts of financial stability and need to respond to the needs of the market dynamically. To enable them to do this, the

[115] ESMA concluded that while substantial risks for the EU and its Member States exist for certain products and services offered in UK CCPs, at this point in time, the costs of a de-recognition outweighed the benefits. See footnote 9 above.

initiative aims to improve the ability of EU CCPs to quicker adopt to changes in market demand and therefore be more competitive.

- Encourage clearing in EU CCPs*:* This initiative aims to encourage clearing in EU CCPs and to reduce certain over-reliance on Tier 2 CCPs, and thereby preserving financial stability, increasing choice in the EU, increasing liquidity and participation, and contributing to the EU's open strategic autonomy.
- Enhance the assessment and management of cross-border risks: This initiative aims to address gaps in the way cross-border risk is assessed and managed in the EU and thereby ensuring a level playing field and avoiding EMIR rules being applied differently depending on the place of establishment of EU CCPs.

6. WHAT ARE THE AVAILABLE POLICY OPTIONS?

6.1. What is the baseline from which options are assessed?

The baseline, against which policy options are assessed, is the scenario under which EMIR and other relevant EU legislations are left unchanged, and thereby leaving the problems to evolve as described in Section 3.3. That is the 'do-nothing' option against which the policy options are assessed (Option 1 in the options below).

6.2. Description of the policy options

This chapter sets out the policy options considered to achieve the three specific objectives described in Section 5.2.

6.2.1. Improve the attractiveness of EU CCPs

The objective is to enhance the CMU and to enhance the attractiveness of EU CCPs and to mitigate certain identified issues with long, burdensome and complex application processes and allow EU CCPs to quickly respond to market developments, and thereby swiftly bring new products to the market to meet the demands of market participants thereby safeguarding financial stability. In the table below, options A2 and A3 are complementary; option A4 considers implementing both.

Policy option	Description
Option A1 – Do nothing	This is the baseline scenario (see Section 6.1).
Option A2 – Simplify procedures for launching new products and changing risk models and parameters	This would be achieved by targeted changes to EMIR and empowerments to ESMA to establish draft RTSs and ITSs specifying the required documents and their content for EU CCPs' applications. Those changes would simplify the current procedures for extension of activities and approval of significant changes in models by (individually or complementarily): i) shortening the deadlines provided for in EMIR; ii) achieving greater standardisation of the documents to be submitted by CCPs in their applications; iii) streamlining the involvement of the different actors in the procedures; and iv) facilitating decision-making through new IT tools.
Option A3 – Introduce an ex-post procedure for certain changes	EU CCPs would be allowed to launch certain new activities/products and implement certain model changes subject to an ex-post approval/non-objection review by the relevant authorities in a certain period. Targeted changes could be introduced to allow EU CCPs to launch certain new activities/products and implement certain model changes that do not increase the risks for the CCP before supervisors approve such measures. The Commission could also be empowered to adopt a delegated act, to change the list of activities that could benefit from the ex post/non-objection procedure.
Option A4 – Combination of Options 2 and 3	The current procedures would be simplified as per Option 2 and an ex-post approval/non-objection period for certain initiatives would be introduced, as per Option 3.

6.2.2. Encourage clearing in EU CCPs

The aim is to foster clearing at EU CCPs, to create a credible and robust alternative for market participants and reduce the over-reliance on Tier 2 CCPs, thus better preserving financial stability. Initiatives should tackle the problems affecting the demand for clearing services at EU CCPs. In the table below, options 2 to 5 are complementary; option 6 considers implementing a combination of them.

Policy option	Description
Option B1 - Do nothing	This is the baseline scenario (see Section 6.1).
Option B2 – Limit/ dis-incentivise banks' excessive exposures to CCPs	The Capital Requirements Regulation (CRR) would be amended to contain excessive exposures to third-country or EU CCPs by banks acting as clearing members or as clients. This option includes 3 alternative sub-options: (B2.1) to introduce a new specific concentration limit under the large exposure framework: where exposures towards a CCP would be limited to a certain threshold and breaching such a threshold, if not addressed in a certain timeframe, would lead to higher capital requirements; (B2.2) to build on the Pillar 2 framework, whereby risks created by excessive exposures towards CCPs would be subject to specific supervisory measures, including possible additional capital requirements; (B2.3) to consider macro prudential tools to account for the aggregated risks of EU banks' exposures to systemic CCPs.
Option B3 – Active account at EU CCPs	An obligation to keep an active account at EU CCPs would be imposed on all EU market participants subject to the clearing obligation. Such EU market participants would be obliged to clear a portion of their new trades in relation to certain clearing services at EU CCPs and to report such trades to the CCP's competent authority. The measure should apply to those services which have been identified as systemically important by ESMA. The specific features of the active account could be defined in a level 2 measure, which would be subject to a public consultation and cost-benefit analysis, taking into account certain criteria, notably that the measure must ensure a reduction in exposures to those clearing services offered by Tier 2 CCPs which are considered of substantial systemic importance. More specifically, ESMA could be empowered to prepare a draft RTS specifying the proportion of activity in the derivative contracts subject to the requirement to be cleared in EU CCPs and the reporting methodology. The Commission could also be empowered to make changes to the list of instruments subject to the requirement to be cleared at a certain proportion in an EU CCP; this would ensure that EMIR is future-proof

	in case ESMA were to identify pursuant to Article 25(2c) of EMIR any other clearing services as of substantial systemic importance. In preparing the draft RTS, ESMA should cooperate with the ESRB, the other European Supervisory Agencies and consult with the ESCB. Under the ESMA Regulation, ESMA is also required to conduct an open public consultation and analyse the potential costs and benefits.
Option B4 - Broaden the scope of clearing participants[116]	Public entities in the EU or some of them (e.g. national debt management office, public development and promotional banks), which currently are not obliged to clear centrally according to EMIR, could clear their derivative transactions at EU CCPs. This could be encouraged by recommending that they clear at EU CCPs if they voluntarily decide to clear centrally.
Option B5 – Facilitate clearing by clients	This option would introduce changes to support central clearing, including amendments in the relevant pieces of sectorial primary/secondary legislation (UCITS Directive, MMF Regulation,[117] Solvency II delegated act[118]) to grant appropriate treatment to exposures to CCPs, where the role of a CCP as a counterparty is not always taken into account. While the amendments of the UCITS Directive and MMF Regulation concern central clearing by funds in general, whether directly or indirectly, the amendments to the Solvency II delegated regulation would address in particular the case of an insurance company wishing to become a direct clearing member of a CCP. In addition, the relevant clearing members and clients offering clearing services could also be required to inform their clients of the possibility to clear at an EU CCP to ensure that clearing members offer clients the possibility to clear at an EU CCP where an offer is available.
Option B6 – Combination of all options	A variant of Option 2 (Pillar 2) could be applied, together with an active account (Option 3), to reduce excessive exposures to third-country CCPs to protect the EU's financial stability. Options 4 and 5 would also be put in place.

6.2.3. Enhance the assessment and management of cross-border risks

The objective is to strengthen the framework for assessing and managing cross-border risks, thus ensuring financial stability. All options are alternatives.

Policy Option	Description
Option C1: Do nothing	This is the baseline scenario (see Section 6.1).
Option C2: Targeted amendments to the current supervisory framework	NCAs would remain responsible for adopting supervisory decisions, with greater input from EU bodies. Targeted amendments could include (individually or complementarily): (1) strengthening EU input in the adoption of decisions by NCAs (e.g. by extending the supervisory areas for which an ESMA opinion is required, such as withdrawal of authorisation, annual review and evaluation without affecting the overall timeframe of the process, empowering ESMA to publish the fact that a NCA has not complied with an ESMA opinion and giving the right to central banks of issue to participate to the CCP Supervisory Committee meetings on more topics); (2) establishing joint supervisory teams; (3) strengthening the role of ESMA in cross-sectoral emergency situations; (4) establishing a Joint Monitoring Mechanism (comprising amongst others the ESAs, the ECB, the SSM, the ESRB and the Commission) to , e.g. monitor at EU level the transfer of EU firms' exposures from Tier 2 CCPs to EU CCPs and client clearing relationships; contribute to the development of Union-wide assessments of the resilience of CCPs focussing on liquidity risks concerning CCPs, clearing members and clients; identify concentration risks, in particular in client clearing, due to the integration of Union financial markets, including where several CCPs, clearing members or clients use the same service providers; monitor the effectiveness of the measures aimed at improving the attractiveness of EU CCPs, encouraging clearing at EU CCPs and enhancing the monitoring of cross-border risks. ESMA, in cooperation with the other bodies participating

[116] PSAs will be subject to the clearing obligation from June 2023 at the latest.

[117] Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds, OJ L 169, 30.6.2017, p. 8 – 45 (MMFR).

[118] The changes to support central clearing by clients in the Solvency II delegated act (see footnote 4) could be made together with changes announced in the context of the Solvency II Review (see COM(2021)580).

	to the Joint Monitoring Mechanism, could be requested to submit an annual report on the results of the monitoring activity. In addition, if ESMA were to identify that competent authorities fail to ensure compliance with potential requirements on clearing at EU CCPs, ESMA could have the option to issue guidelines or recommendations or to take any other action. Finally, ESMA could also be requested to review the proportion of the activity to be cleared in active accounts.
Option C3: Centralise EU CCP supervision	A single supervisor would be established for EU CCPs; it could be ESMA, considering its current involvement in the supervision of EU CCPs and that it is the EU supervisor of Tier 2 CCPs under EMIR 2.2. There are two possibilities (mutually exclusive) as to the scope of ESMA's direct supervision: all EU CCPs or certain EU CCPs, on the basis of certain criteria (e.g. size, interconnectedness). ESMA's powers could include the power to grant/ withdraw authorisation, approve the extension of services or activities, validate changes to models. For those CCPs for which ESMA would be the single supervisor, NCAs would have no powers. In its tasks, ESMA could be required to cooperate closely with other bodies, e.g. the ESCB. No authority would have binding powers over the single supervisor.

6.3. Options discarded at an early stage

The following options were discarded at an early stage as inconsistent with the EU legal framework or with financial stability considerations, which are at the heart of EMIR and of this initiative: on the supply side, granting all EU CCPs the same access to central bank liquidity facilities, irrespective of the need for a banking licence and extending the operating hours of payment systems (Target 2) beyond the current closing time, as these fall under the competence of central banks; and on the demand side, broadening the scope of products under the clearing obligation and introducing an obligation to clear all derivative transactions at EU CCPs and/or Tier 1 CCPs. Also the options of global coordination and a permanent equivalence decision for UK CCPs have been discarded at an early stage. Annex 6 explains the rationale for not further assessing these options.

7. WHAT ARE THE IMPACTS OF THE OPTIONS AND HOW DO THEY COMPARE?

This section describes the impacts of each policy option and compares them in terms of effectiveness in meeting the three specific objectives (supply side, demand side, consideration of cross-border risks), coherence with the EU framework and efficiency (cost effectiveness). It also provides the rationale for selecting each preferred option.

7.1. A - Measures to improve the attractiveness of EU CCPs

7.1.1. Option A2 – Simplify the procedures for launching products and changing models and parameters

Effectiveness in meeting the specific objectives

Simplifying the procedures for launching new products and changing risk models and parameters would contribute to ensuring shorter time to market.

In the targeted consultation, CCPs were of the view that regulatory compliance costs were high and procedures time consuming due to the current structure of the authorisation process.[119]The majority of stakeholders (90%, i.e. 20 out of 22 respondents) supported facilitating and speeding up the approval process for new products. Respondents (mainly CCPs, but also two business associations, a central bank and a national supervisory authority of a Member State) pointed to the need to clarify the procedures as well as the requested documentation, underling the complexity and lack of clear timelines. Three public authorities agreed that there is room for a faster approval

[119] See Annex 2, section on Supervision of CCPs.

process for certain initiatives. In the meeting with Member States on 16 June 2022, Member States agreed in general that procedures under Article 15 and 49 EMIR should be more efficient and the processes improved.[120]

Before EMIR 2.2, Article 49, for example, required, in addition to an independent validation to be obtained by the CCP, two separate validations by the NCA and ESMA of significant changes to the models and parameters. The Commission EMIR 2.2 proposal sought to clarify the conditions under which a CCP may obtain the validation of significant changes to its adopted models and parameters, simplifying the process. This proposal was however amended in the negotiations by the co-legislators, and the end result gives rise to multiple consecutive processes, assessing first if the change is significant or not to determine the appropriate process and then another process to validate the change. The process for launching new products faces similar, but not identical challenges, in particular the lengthy procedures for the determination of the completeness of an application which can last for several years before the official approval procedure starts.

Under this option, the process for extending a CCP's services or activities and introducing changes to risk models would be simplified, and shortened. This would offer CCPs greater certainty and predictability. Technical rules (draft RTS and ITS prepared by ESMA to be adopted by the Commission) could specify the precise content and format of the exact documents to be provided for an application, reducing the number of questions that need to be asked and consequently, reducing the timeframe further. This should reduce the number of cases where additional documents are requested and/or applications are refused and have to be re-submitted, avoiding delays. New IT tools would facilitate information-sharing among relevant authorities, the college and ESMA, allowing them to do their assessments in parallel (instead of in sequence) and coordinate requests for additional information. Streamlining the involvement of the various actors would also simplify the process and enable EU CCPs to bring their products to market quicker, and at lower cost, and to react faster to changing market conditions. Similarly, this option would bring greater certainty to CCPs about which model changes need to be approved and which ones not, saving CCPs time and investments.

In the meeting with Member States on 16 June 2022, most representatives who expressed their view favoured exploring the setting up of a single point of contact where all CCP submissions could take place via a single digital platform and be immediately shared with the national competent authority (NCA), ESMA and the other authorities involved in that CCP's supervision (e.g. college members). This would ensure work can be conducted in parallel, possibly shortening the process considerably. Another option that most Member States who expressed an opinion considered worth exploring further was to standardise more the documentation to be submitted by EU CCPs.

All those changes would enhance the ability of EU CCPs to compete internationally and would not compromise financial stability, as the necessary checks would remain in place, but more proportionate and efficient where justified. However, this option does not address new activities or changes that are of lower impact/less significant, which may deserve an even simpler procedure as highlighted in the targeted consultation.[121]

[120] See Annex 4.2, in particular section 2.1 and section 3.2.1 for more details.

[121] Some stakeholders (i.e. CCPs, ESMA) mentioned that a fast-track procedure for certain changes could be designed, while maintaining the full authorisation for more complex cases.

EU CCPs that can compete for business more efficiently should be able to attract business, as a number of market participants underlined that the availability of a wider range of products in EU CCPs.[122] The increased market offer could with time contribute to achieving the second specific objective of encouraging clearing in EU CCPs, and could indirectly lead to a reduction of the over-reliance on third-country CCPs and the ensuing risks to financial stability.

In terms of the third specific objective (i.e. consideration of cross border risks), this option could broaden the choice of market participants for where to clear, offering alternatives to the benefit of financial stability and possibly helping to reduce the over-reliance on third-country CCPs. However, this option would not address directly the need to enhance the assessment and management of cross-border risks.

Coherence

This option would streamline the procedures for CCPs to launch new activities and change risk models and parameters. As such, it also fully contributes to the objective of strengthening the CMU by building efficient market infrastructures. In addition, fostering digitalisation of procedures is consistent with EU policies in the field of digitalisation. This option is coherent with financial stability objectives: CCPs' proposed initiatives should not endanger financial stability as they will be reviewed by the supervisors.

Assessment of the impacts by stakeholder group

EU CCPs could launch new initiatives and change risk models quicker, increasing their ability to expand business and compete internationally. They would have more certainty about the approval procedures, including documents needed and timelines. This would increase efficiency in the use of resources by CCPs, freeing up capital and human resources for other projects and tasks, and putting them in a better position to bring new products to market. They would also benefit from more certainty on the timelines to operationalise their products, reducing disincentives to bring new products to market. This would lower the risk of losing business to third-country competitors which can go through faster procedures. There will be also some administrative cost savings from the simplified processes, although these are expected to be smaller in comparison with the reduction of opportunity costs described above. They can be estimated to 0.5 FTE per CCP on average (some CCPs being smaller and less prone to launching new products on a regular basis). These benefits would be ongoing. Additionally, shortening the procedures may contribute to safer CCPs: time is key when CCPs have to adjust their risk models to changes of external market conditions.

Clearing members could benefit from greater offer by CCPs, in a faster way, and would thus have more choices where to clear. More competition could be spurred amongst CCPs, thus potentially triggering a virtuous circle with increasing opportunities for clearing members. In addition, the reduction of regulatory costs incurred by CCPs and the increased competition could lead to a reduced cost of clearing for clearing members. Clarity over CCPs' launch dates for a specific service or activity would reduce legal uncertainty and implementation costs (e.g. IT adaptations, need to maintain dual CCP set-up, adjustment of procedures and contracts with customers) for clearing members. These benefits would be ongoing. Like clearing members, **clients** too could benefit from greater offer by CCPs and would have more choices where to clear, with reduced costs. These benefits would be ongoing.

[122] See Annex 2.

CCPs' **NCAs** would benefit from more efficiencies by using new IT tools and from standardised requirements for the application documents. These benefits would be ongoing. At the same time, they could be more restrained in the time they have at their disposal to assess applications for extension of activities and changes to models, which may imply further resources. Shorter timelines may be even harder to meet in case more requests for the approval of new projects are submitted by CCPs, as a result of a greater trend towards innovation which would be spurred by the measures included in this option. These costs would be ongoing. As regards the new IT tools, NCAs would have to bear costs of setting up specific IT facilities, or connecting to central IT facilities which could be established jointly, e.g. using ESMA as a central IT hub. Doing so could mitigate the cost impact on individual national supervisory authorities. The cost of the IT tools would be mainly one-off (development), with a smaller part ongoing (maintenance and updating).

As regards **ESMA**, the procedures should be shorter and simpler and more standardised documents should be submitted, which should help to reduce or simplify ESMA's work. ESMA would also benefit from greater efficiencies by using new IT tools. These benefits would be ongoing. More requests by CCPs to extend services may ensue as an indirect impact which may somewhat increase ongoing costs. As regards the new IT tools, ESMA would have to bear costs related to the technical and operational setup only if it used the same tools for its own purposes. Should ESMA operate IT tools on behalf of national supervisory authorities, such authorities would have to refund ESMA's expenditures. This cost would be one-off, but maintenance costs would be ongoing.

7.1.2. Option A3 – Introduce an ex-post approval/non-objection procedure/review for certain changes

Effectiveness in meeting the specific objectives

Certain new activities (e.g. new products or services in an asset class a CCP is authorised to offer; new EU currency in case of an already multi-currency CCP) and changes in risk models which do no not qualify as significant, could be assessed in accordance with non-objection procedures or validations, where, within a certain period of time, the application will be deemed to have been approved unless the NCA (and ESMA for risk models) objects to the change.

An extension of services or model changes qualifying for an ex-post review/non-objection procedure or validation would be notified by the CCP to the NCA, the college and ESMA. In some of those cases, where the change is very likely not significant or not raising the risk within the CCP, the CCP could be allowed, to provide the services or apply the model changes as soon as it submits its application. However, if the NCA objected by the end of the non-objection period, the CCP would have to stop offering this clearing services or using the new model.

To implement those changes different options could be used, including a combination between targeted changes under EMIR and empowerments in the form of a delegated act: targeted changes could be included in EMIR to provide for the ex-post/non-objection procedure and complemented by level 2 acts (RTS and ITS) to further specify the list of non-material changes for which the ex-post/non-objection procedure could apply. The cost and risks to the CCP in that case would appear to be limited. This is due to the understanding that a CCP would only start offering clearing or applying a model change, without an approval, when the CCP is sure that the offer would clearly fall under the non-objection procedure or validation, and if unsure, the CCP would wait a short period of time for this to be confirmed.

This option would simplify the framework and clarify which changes require a full procedure and which ones do not, thus also fostering harmonisation. It would avoid unnecessarily burdensome procedures and ensuing administrative and opportunity costs and thus contribute to enhancing the attractiveness of EU CCPs. However, this option alone would not simplify procedures in all cases, but only where changes are less significant from a CCP risk and financial stability perspective: as such, it would only partially meet the specific objective of improving the attractiveness of EU CCPs. By increasing the attractiveness of EU CCPs, this option could indirectly lead to a reduction of the over-reliance on third-country CCPs and the related risks and to an increase in clearing activity at EU CCPs. However, it would not specifically address the need for better consideration of cross-border risks that such increased intra-EU clearing activity would necessitate.

In the targeted consultation, there was broad support for an ex-post approval with 65% of stakeholders supporting its introduction, at least for some types of changes. On the details of how to operationalise such an approach, views differed considerably: two CCPs proposed that changes should be classified ex ante into minor/medium/big and the level of involvement of the authorities should follow as a consequence; 2 other respondents (an NCA and a CCP) proposed that assessment of the introduced changes takes place ex post; another NCA proposed that the NCA deals with the procedures and ESMA validates ex post and possibly issues recommendations to the CCPs. Another public stakeholder, who provided feedback on a confidential basis, stated that an ex-post approval for risk models should only be available for changes which clearly enhance risk management. However, one association did not support ex-post approval, preferring instead an earlier involvement of the authorities in the development of the proposed changes.

In the meeting with Member States on 16 June 2022, several Member States suggested exploring an ex-post approval/review as done in other jurisdictions to allow CCPs to launch new products in asset classes already cleared under an ex-post approval/review process as well as a self-certification process for some rules changes. Member States also pointed to the need to carefully frame such approaches. One Member State highlighted that this option should only be available if non systemic risks are concerned.

Coherence

This option fully contributes to strengthening the CMU by relying on efficient and competitive CCPs, while remaining coherent with financial stability objectives as it would concern initiatives for which a full approval procedure has been identified as disproportionate. In addition, it is expected to better allow CCPs to update risk models timely, which is key for proper management of risks.

Assessment of the impacts by stakeholder group

EU CCPs could launch new non-major initiatives and bring non-significant changes to risk models much faster[123], increasing their potential to expand their business and compete internationally. This option would also enhance clarity as to when faster procedures are appropriate and applicable: in this way, the time and resources used by CCPs to assess whether a change is significant or not would be reduced if not completely saved, and resources would not be wasted to follow long procedures when not necessary.

[123] E.g. this could be the addition of a new currency by an already multi-currency CCP. Specific cases could be identified in the level 1 text, while ESMA could be mandated to report and identify additional cases.

In addition, like option A2, this option would reduce the probability of losing business to competitors while waiting for regulatory approvals. These benefits would be ongoing. CCPs estimate that an ex-post approval process could lead to economies of at least 25% compared to the current procedures.[124] While the current cost of procedures is unknown, the cost reduction can be estimated to be between EUR 5 million and EUR 15 million per year over all EU CCPs.

As under option A2, **clearing members** could benefit from improved offer by CCPs in a faster way and would have better choices where to clear. Even though this would be true for certain types of initiatives/changes only, such initiatives could encompass, e.g. the addition of a new currency, which is an important aspect when comparing the offer of EU CCPs with the offer of other third-country CCPs. The reduction of regulatory costs incurred by CCPs could also lead to reduced cost of clearing for clearing members. Clarity over CCPs' launch dates for a specific service or activity would reduce legal uncertainty and additional implementation costs (e.g. IT adaptations, need to maintain dual CCP set-up, adjustment of procedures and contracts with customers) for clearing members. These benefit would be ongoing. **Clients** would benefit similarly as clearing members (also ongoing).

CCPs' NCAs would benefit from more clarity as to when a proposed initiative can be considered as minor/less significant. A more harmonised approach is likely to save NCAs' resources and time spent in assessing, e.g. if an extension of authorisation is required. This benefit would be ongoing. **ESMA** would also have similar ongoing benefits in terms of resources.

7.1.3. Option A4 – Combination of Options A2 and A3

Effectiveness in meeting the specific objectives

Combining Options A2 and A3 would simplify the current procedures to a greater extent while preserving financial stability. It would thus achieve the first specific objective to a fuller extent than those options individually.

The approximate range of related cost savings of combined options A2 and A3 has been estimated based on interactions with stakeholders and several assumptions which were needed to extrapolate the effects to the whole EU. This cost saving is of an administrative nature and thus counts under the "one in, one out" approach as an "out" in the range of approx. EUR 5 million to EUR 15 million (EU total). This is likely to be concentrated in few EU CCPs (as few EU CCPs might bring new products to the market in a given year; for more details on the estimates, see Annex 3, Table I).

Both options can be combined seamlessly and the positive impacts on the attractiveness of EU CCPs are considered additive. As regards the objective of encouraging clearing in the EU, this option would also contribute to it as it would increase the attractiveness of EU CCPs for market participants (as evidenced by stakeholder replies). Finally, in terms of the third specific objective (i.e. consideration of cross border risks), while this option could broaden the choice of financial market participants as to where to clear, thus offering alternatives also to the benefit of financial stability, it would not specifically address the need to enhance the assessment and management of cross-border risks.

Coherence

[124] According to confidential information provided to DG FISMA services.

This option contributes to strengthening the CMU through efficient and competitive CCPs. It also contributes to financial stability, as illustrated above. In addition, fostering digitalisation of procedures and setting up a "single point of contact" would be consistent with EU policies in the field of digitalisation.

Assessment of the impacts by stakeholder group

EU CCPs could launch new initiatives and change risk models sooner, as well as benefit from a faster approval for certain initiatives, reducing their compliance costs in the range of EUR 5 million to EUR 15 million per year (see Annex 3) and increasing their potential to expand their business and compete internationally. They would have greater certainty about the whole procedure, including the documents needed. This would increase the efficient use of CCPs' resources. CCPs would also benefit from greater certainty as to the time necessary for their planned initiatives to become operational, which is expected to reduce existing disincentives to bring new products to the market. All this could rather significantly reduce opportunity costs for EU CCPs, i.e. the probability of losing business to the benefit of third-country competitors. These benefits would be ongoing.

Clearing members could benefit to a large extent from the enhanced offering capacity by EU CCPs and the quicker time to market for new clearing services over time. More competition could be stimulated, thus potentially triggering a virtuous circle with increasing opportunities for clearing members. The reduction of regulatory costs incurred by CCPs, combined with higher competition, could also theoretically lead to reduced cost of clearing for clearing members. Clarity over CCPs' launch dates for a specific service or activity would reduce legal and operational uncertainty and implementation costs (e.g. IT adaptations, dual CCP set-up, changes to procedures and contracts with customers) for clearing members. These benefits would be ongoing. **Clients**, similarly to clearing members, would benefit from enhanced offering capacity by EU CCPs and enhanced time to market. These benefits would be ongoing.

CCPs' NCAs could be more restrained in the time they have to assess extensions of activities and changes to models and this is likely to have some resource implications. Such shorter timelines may also be more challenging to meet in case more requests for the approval of new projects are submitted by CCPs, as a result of a greater trend towards innovation which would be spurred by the measures included in this option. These costs would be ongoing. As regards using new IT tools, national supervisors would have to bear costs of setting up specific IT facilities or connecting to central IT facilities. This cost would be mainly one-off (with some ongoing costs of maintenance and updating). At the same time, costs to national supervisors could be partially mitigated by greater efficiencies through the use of the new IT tools and clarity as to "minor" initiatives and these effects would be ongoing.

Depending on the details of a proposal, this could have several impacts on **ESMA**. The procedures should be shorter and simpler and more standardised documents should be submitted, helping reduce or simplify ESMA's work as well. ESMA would also benefit from greater efficiencies by using new IT tools. These benefits would be ongoing. Potentially more requests by CCPs to extend services may ensue as an indirect impact, with the related costs being ongoing. Should ESMA operate IT tools on behalf of national supervisory authorities, such authorities would have to refund ESMA's expenditures. This cost would be mainly one-off, with more moderate ongoing costs of maintenance and updating.

7.1.4. Choice of preferred option.

Option A2 alone would partially meet the objective of enhancing EU CCPs' ability to compete internationally, as it would streamline the procedures of Articles 17 and 49 of EMIR, but would not set out a simplified process for proposed activities and changes that are clearly less significant from a financial stability perspective. *Option A3* alone would also partially meet the objective, as it only addresses the cases of proposed activities and changes to models deserving a fast procedure. The combination of options A2 and A3, i.e. **Option A4**, would be the most effective in meeting the first specific objective and would also be the most efficient in delivering greater cost savings than each option individually. This option could therefore be implemented by targeted changes to EMIR to both streamline procedures and to introduce an ex-post, fast track or non-objection procedure for changes being considered non-significant or non-material. To implement the streamlined procedures, RTSs and ITSs could be used to describe the documents CCPs need to submit when applying as well as those documents' content and form. To ensure the process evolves with the market, the Commission could be empowered to adopt a delegated act to amend the list describing non-material changes. The precise impact of Option A4 on stakeholders will depend on which procedures (i.e. streamlined under option A2 or "fast-track" under option A3) will be used in practice more; for the purposes of this assessment it is assumed that they are both used equally. Option A4 would also be coherent as it would enhance the CMU and be aligned with Commission aims to safeguard financial stability and foster digitalisation. Hence, it is the preferred policy option.

	Effectiveness			Efficiency (cost-effectiveness)	Coherence
	Improve the attractiveness of EU CCPs	Encourage clearing in EU CCPs	Enhance the assessment and management of cross-border risks		
Option A2	++	+	+	++	++
Option A3	++	+	+	++	++
Option A4	+++	++	+	+++	++

	Summary of winners and losers			
	CCPs	Clearing Members	Clients	Supervisory authorities
Option A2	++	+	+	+
Option A3	++	+	+	+
Option A4	+++	++	++	+

Legend: **+++** = Very positive **++** = Positive **+** = Slightly positive **+/-** = Mixed effect **0** = no effect **-** = Slightly negative **--** = Negative **---** = very negative

7.2. B - Measures to encourage clearing in the EU

7.2.1. Option B2 - Limit/dis-incentivise banks' excessive exposures to CCPs

Effectiveness in meeting the specific objectives

Banks and investment firms[125], mostly the larger ones, are the main clearing members. Smaller undertakings would be clients, clearing through clearing members. As such,

[125] While this section focuses on possible modifications to the CRR/CRD, similar changes could apply to the IFD in the context of investment firms.

requirements targeting banks and investment firms would influence the demand for clearing services and play a role in reducing the over-reliance on Tier 2 CCPs.

The **first sub-option (Option B2.1)** would introduce a new specific large exposure limit[126] to discourage banks from being heavily exposed to a single CCP (EU or third-country). This would be a Pillar 1 requirement,[127] directly applicable to EU banks. In case of breach, and absent adequate remediation in a certain timeframe, it could lead to higher capital requirements[128]. This new limit would incentivise EU banks to diversify their clearing activities across CCPs. While helping reduce the over-reliance on certain systemic CCPs, this would not necessarily encourage clearing in EU CCPs, as exposures could be diversified among all available CCPs, including recognised third-country CCPs, potentially increasing risks in other third-country CCPs. In addition, this option would introduce a hard limit that could impact the trading capacity of banks, particularly market makers, and have detrimental effects on the liquidity and availability of certain markets, in addition to potentially impacting netting sets. Also, depending on the CCPs' offer, adequate diversification may not be possible and may force banks to face a surcharge in terms of capital requirements for those clearing products where no (sufficient) substitutability is available and until the offer develops.

In the targeted consultation views were mixed regarding whether "targets" should be set, however the majority of respondents to the consultation opposed "caps" on exposures to Tier 2 CCPs[129]. Considering these elements, other options may offer greater flexibility to accommodate a wider range of trading profiles and may be less disruptive in terms of trading activities, making this sub-option less appealing.

The majority of respondents to the targeted consultation that expressed an opinion (70%, i.e. 19 out of 27 respondents) was against imposing higher capital requirements on Tier 2 CCPs. They argued that this could have negative effects on the international competitiveness of EU players due to the increased costs. Some respondents believed that, should such a measure be considered, it should only target the exposures to the services of the non-EU CCPs which were determined as substantially systemic by ESMA and/or certain activities should possibly be exempted from the calculation. Others expressed support for higher capital requirements under the condition that they would be combined with other measures such as active account requirements and development of offer. The majority of respondents (80%, i.e. 16 out of 20 respondents) saw a risk of participants relocating clearing to other non-EU jurisdictions if a higher capital requirement on excessive exposures to T2 CCPs is imposed.

In the meeting with Member States on 16 June 2022, five Member States and one EU authority were not in favour of a large exposure framework. Two Member States saw disadvantages for EU clearing members compared to banks in other jurisdictions. Another Member State considered a large exposure framework too rigid. One Member

[126] Exposures to CCPs are excluded from the large exposures limit under CRR.

[127] The Basel Capital Accord is based on 3 Pillars: "Pillar 1", setting minimum capital requirements banks have to meet; "Pillar 2", establishing a supervisory review of banks' capital adequacy and allowing supervisors to impose additional measures, including capital add-ons, if risks banks incur are not fully or adequately addressed under the "Pillar 1"; and "Pillar 3" establishing disclosure rules to foster market discipline. The Basel framework was introduced in the EU through the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR). See Bank for International Settlements, the Basel Framework, https://www.bis.org/basel_framework/.

[128] Similar to what is currently foreseen under Article 397 of the CRR for trading book exposures.

[129] See Annex 2. Not many replied to this specific question, but among those replying there were major banking groups, some authorities and trading associations.

State was in favour of a large exposure framework which should target large users. Two Member States supported exploring higher capital charges or activity targets linked to capital penalties. A **second sub-option (Option B2.2)** could be based on the Pillar 2 framework. Under the CRD/CRR, the Pillar 2 framework provides competent authorities with tools to address risks that are insufficiently captured by the minimum (Pillar 1) capital requirements. However, while concentration risk arising from exposures towards counterparties, including CCPs, is already an area of supervisory scrutiny under the Pillar 2, there may be a need to consider more targeted measures to explicitly address excessive exposures towards CCPs, in particular those Tier 2 CCPs offering services of substantial systemic importance for the Union or one or more of its Member States, under the Supervisory Review and Evaluation Process (SREP). An explicit Pillar 2 empowerment could be introduced to ensure authorities consistently take into account banks' level of exposures towards those CCPs when they carry out their SREP and bring clarity to the use of supervisory powers to address excessive concentrations. In parallel, CRD could be amended to require banks to have specific plans for controlling and monitoring exposures towards CCPs. This would make the supervisory expectation towards firms explicit and increase awareness on the need to mitigate excessive concentration of exposures towards CCPs. The Pillar 2 framework could also be used to ensure an adequate degree of compliance with other policy options. In particular, it could be combined with a requirement to maintain an active account at EU CCPs (see Section 7.2.2), allowing for a supervisory response to non-compliance. The possible combination of individual options is considered in Section 7.2.5. On balance, the flexibility of the supervisory review process to adapt to the specificities of each business profile and the fact that this sub-option could easily be grounded in the existing provisions of the Pillar 2 framework underline the attractiveness of this sub-option.

In the meeting with Member States on 16 June 2022, one Member State and one EU authority argued that it might be difficult to calibrate an appropriate exposure level for large exposure capital requirements and highlighted that national supervisors are already allowed to impose additional requirements under the current SREP tool. The EU authority argued further that risks related to over-reliance on a systemic third-country CCP may be manageable on a clearing member level but not on a macro level. Therefore, the risk should be addressed at a macro- rather than at clearing member level.

Finally, as a **third sub-option (Option B2.3),** macroprudential measures could address the systemic risk of an excessive exposure of the overall EU banking sector to a given CCP. These could take the shape of a capital buffer (i.e. a "Systemic Risk Buffer") or targeted (temporary) actions under Article 458 of the CRR to tighten large exposure limits (however, this would require that exposures to CCPs are brought in the scope of large exposures limits in the CRR), or a limit to the aggregated level of exposures towards CCPs as "intra-financial sector exposures". This sub-option could help mitigate the systemic risk from excessive exposure concentration towards a single CCP, and contribute to limiting such excessive exposures. However, this sub-option alone would not ensure that clearing would rise at EU CCPs: it would need to be complemented by other options envisaged under Section 7.2. In addition, given that national authorities are entrusted with the activation and calibration of the Systemic Risk Buffers and of the macroprudential measures under Article 458 of the CRR, ensuring the desired behavioural changes from market participants in a coherent way is not obvious.[130]

[130] This may be tempered by ECB powers under Article 5 of the SSM Regulation (Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning

Furthermore, given the last-resort nature of the latter measures, the bar for their activation may not be met, and if met, the measures would be subject to a biannual approval process. Ensuring coordination between national authorities on the appropriate calibration may also prove complex and controversial. Another option would be to set up stricter large exposure limits through Article 459 of CRR, which would apply at the EU level. However, the legal conditions for its activation may not be met unless exposures to CCPs are brought under the CRR large exposures; in addition, the complex procedure for its activation may not allow a timely intervention.

In general, in the targeted consultation most respondents (79%[131]), in particular the banking sector, were negative as to macroprudential tools and all respondents were against macroprudential buffers. They mainly highlighted the negative consequences for EU players' international competitiveness due to the increased costs associated with such measures. For these reasons, a sub-option based on macroprudential tools appears the less adequate to address the problem at stake.

To conclude, certain sub-options, such as Option B2.1 based on large exposures limits or B2.2 based on the Pillar 2 framework, appear to be better able to contribute to reducing excessive exposures to CCPs, and therefore contributing to a better diversification of risks and an overall reinforcement of financial stability. However, none of these sub-options alone would ensure a reduction of the identified excessive exposures. As such, this option contributes indirectly to the objective of encouraging clearing at EU CCPs.

Option B2 would generally promote better control and monitoring of the exposures of clearing members and clients towards CCPs, including third-country ones. Excessive exposures would be reduced or better capitalised. Contributing to a better diversification of the exposures, could help address the risks arising from an over-reliance on certain CCPs more specifically and contribute to reinforcing financial stability by ensuring a better diffusion of risks in times of stress. However, it does not touch upon the EU supervisory framework per se and the way the increased cross-border risks in the EU would be managed. Depending on the increase in clearing volumes in the EU that would result from this measure, a need for strengthening the EU dimension of the supervisory framework could be further justified to ensure cross-border risks in the EU are properly monitored and handled.

As regards improving the attractiveness of EU CCPs, these measures target the demand for clearing services and are not directly suitable to improve the attractiveness of EU CCPs. However, since they would help to diversify exposures towards CCPs, they can, partly[132], lead to an increase, or a better allocation, of the demand for clearing services in the EU and contribute to creating a virtuous circle by which EU CCPs would be more incentivised to also improve their offer and become more attractive overall.

Based on the above, CRD/CRR-related measures would help meet the policy objectives only when considered in combination with other options. Considered in isolation, these measures may not be sufficiently targeted and effective to limit and dis-incentivise banks' excessive exposures to CCPs. In addition, the calibration of the measures relying

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policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63–89) to top-up capital based measures of Member States participating in the Banking Union. However, besides being politically controversial, this would only allow tightening existing measures.

[131] i.e. 15 out of 19 respondents.

[132] Insofar exposures are concentrated towards third-country CCPs and assuming that there would be sufficient substitutability ensured by EU CCPs to allow for the transfer of excess exposures.

on the large exposures framework or any macroprudential measures would be crucial in determining the degree of their effectiveness, but particularly complex and challenging, thereby leading to some residual uncertainties as to the final outcome. The measures based on the Pillar 2 framework would allow for more flexibility in terms of implementation and are therefore preferred.

Coherence

By fostering an appropriate diversification of exposures towards CCPs, some of the sub-options considered above could support the policy objective of a reduction of the excessive exposure of EU clearing members and clients towards Tier 2 CCPs, thus reducing over-reliance on them. This option could however better contribute to the objective of encouraging clearing in EU CCPs when considered in conjunction with the other options envisaged under this section. This would contribute to the Commission priorities on open strategic autonomy and strengthening the CMU. However, the potential increase in clearing costs that would result from this option would have to be carefully considered to ensure that it would not discourage market participants from clearing centrally.

Assessment of the impacts by stakeholder group

Overall, depending on where clearing flows would be reallocated, some **CCPs** would benefit from these measures. As regards, in particular, EU CCPs, the effects of this option would be uncertain as clearing volumes could be diversified towards other third-country CCPs. The resulting potential benefit would be ongoing for the concerned CCPs. Other CCPs, to which banks and investment firms are excessively concentrated, could lose some business and this cost would be ongoing.

These measures could have a negative impact on EU **clearing members'** competitiveness by increasing their capital requirements and constraining their ability to trade and clear, including according to their (non-EU) clients' requests. Higher capital requirements or caps on exposures to CCPs would result in higher costs for EU clearing members, especially in the short term. The medium-to-long-term impact would depend to a large extent on how large the loss of netting effects would be and on the difference in fees charged by the CCPs to which part of the business would migrate in comparison to the original CCP. EU clearing members could also face the challenge of moving existing trades, which would come as a one-off transitional cost. Depending on the specific design of these measures, EU clearing members may lose shares of business they currently have with non-EU clients, e.g.[133] these clients could move to non-EU clearing members (which could continue accessing freely multiple liquidity pools and benefit from lower cost of clearing). The described costs might be more contained in case of an approach building on Pillar 2 measures, which could be more flexible and more tailored to specific circumstances (i.e. bank by bank, with consideration of individual cases in terms of implementation etc.).

Costs may also arise in case clearing in the EU turns out to be more expensive than clearing in third-country CCPs. This may be linked to the restrictions imposed, which would affect the ability of EU clearing members to clear freely at any CCPs[134]. Such

[133] According to confidential information submitted to DG FISMA, clearing by some EU clearing members with non-EU clients brings significant revenues, e.g. revenues from non-EEA clients in the interest rate swaps segment can account for almost 50% of client clearing-related revenues.

[134] According to confidential information submitted to DG FISMA, measures restricting the ability of EU clearing members to choose the clearing location and introducing some fragmentation can contribute to a

costs however could be alleviated in a medium to longer-term perspective depending on market adaptations, e.g. with liquidity increasing at EU CCPs.

These measures would contribute to a better risk diversification of EU clearing members: banks' exposures to CCPs would be allocated in a way that is commensurate to their capital base, thus potentially contributing to overall financial stability objectives. The diversification created by these measures could however make the management of liquidity and collateral more complex and less efficient, at least in an initial phase, as existing pools would be split. The costs will likely be significant, at least in a first phase, depending on the calibration of the measures. This will also depend on how the market will adjust in response to requirements imposed.

In any case, these measures are likely to result in more costs for **clients**, at least in an initial phase, and may give rise to difficulties in accessing clearing. It could be reasonably expected that clearing members would pass on (at least partly) costs to their clients. In addition, some clients may be incentivised to move to non-EU clearing members. At the same time, costs for clients could decrease in a medium to longer term perspective, reflecting the dynamics of the costs for clearing members and market dynamics, and clients could benefit from broader choices where to clear. All in all, whether the costs for clients would be ongoing or not also depends on several factors and how the market will react to the requirements imposed. The benefits would be ongoing.

As regards impacts on supervisory authorities, considering the population of EU clearing members, most of the impact is expected on the **competent authorities responsible for the supervision of banks and investment firms** as they would need to monitor that implemented option would deliver its effects. This could be integrated in the ongoing supervision and would not necessarily constitute an additional cost for authorities. On average, the impact would be seen as neutral.

7.2.2. Option B3 – Active account at EU CCPs

Effectiveness in meeting the specific objectives

An obligation to keep an active account at EU CCPs would be imposed on all EU market participants subject to the clearing obligation. Such EU market participants would be obliged to clear a portion of their new trades in relation to certain clearing services at EU CCPs and to report such trades to the CCP's competent authority. The measure should apply to those services which have been identified as systemically important by ESMA. Requiring EU market participants to hold an active account at an EU CCP can contribute significantly to meeting the general objective of this initiative to enhance EU financial stability. This active account could be the only account a market participant has at a CCP, or an additional account. First, for market participants who want to be active at multiple CCPs, this second account would need to be effectively active, i.e. there could be a specific requirement to clear a portion of new trades in the EU so that the account is not be "dormant", as several accounts at EU CCPs are today). This would ensure that EU market participants have a credible back-up in case of need. Second, in contrast to Option B2, and because of the fact that the account would need to be actively used, this measure would specifically help increase clearing volumes in the EU, addressing the issue of over-reliance on third-country CCPs which can now be a source of financial stability risks and at the same time support the CMU project.

price differential between CCPs, or increase the volatility of such a differential, with negative cost repercussions on EU clearing members.

The active account requirement should therefore concern the services identified by ESMA as of substantial systemic importance[135], thus explicitly targeting the excessive reliance on such services. It could be imposed on all market participants subject to the clearing obligation, thus going beyond clearing members. The legal text could also require entities subject to this obligation to report on the clearing they have done in the relevant type of transactions in an EU CCP.

The specific features of a requirement (e.g. volumes / percentage of clearing to ensure a reduction in exposures to those clearing services offered by Tier 2 CCPs which are considered of substantial systemic importance, frequency of use, reporting methodology) could be defined in a level 2 act, e.g. a draft RTS to be prepared by ESMA, in cooperation with the ESAs and the ESCB. In light of the fact that ESMA assesses the systemic importance of the third-country CCPs and their services, it is appropriate for ESMA to be mandated to establish the proportion of activities that would reduce the risks related to their substantial systemic importance. ESMA should adopt the draft RTS **after having conducted an open public consultation and analysed the potential related costs and benefits**, as required under the ESMA Regulation. This requirement could also be designed to increase gradually, to allow the market to adapt and minimise the costs while the offer gradually develops.

To ensure, where suitable, that the obligation to clear certain instruments at an EU CCP is reflecting the most recent status of ESMA's assessments identifying services being considered substantially systemically important pursuant to Article 25(2c) of EMIR, the Commission could also be empowered to make changes to the list of instruments subject to the requirement to be cleared at a certain proportion in an EU CCP.

Moreover, the implementation of the measures aimed at encouraging clearing at EU CCPs, including those calibrated in a level 2 act, could be **monitored on an ongoing basis by a cross-sectoral monitoring mechanism** (see Section 7.3.1), in order to allow for their quick review if necessary. The level 2 act can more quickly be adapted to changed circumstances than EMIR, so this choice provides for an appropriate degree of flexibility and allows for the careful and proportionate calibration of the requirement.

This may lead to additional costs relevant for "one in, one out", as there will be some administrative costs related to the reporting of active account requirements as well as very limited paperwork related to opening an account with a CCP. The reporting of active account requirements needs to be ensured continuously and the related costs will therefore be of a recurrent nature, even though presumably quite limited. The paperwork related to opening an account with a CCP will be a one-off cost occurring when the account is actually opened. The magnitude of these costs depends on the specification of the active account requirements in the delegated act and the frequency of reporting.

In the targeted consultation, this was one of the more widely supported measures with 85% of respondents finding requiring an active account a reasonable measure.[136] Views differed however on how an active account should be defined. Some stakeholders (including market participants and a public authority) noted that an active account should only be a back-up solution for occasional use in order to test the account's smooth functioning. Other stakeholders (including two EU CCPs, market participants and two public authorities) suggested that an active account should have requirements regarding the level of its use. Suggestions varied considerably regarding the nature of these

[135] 2021 ESMA report on UK CCPs (see footnote 9 above).
[136] See Annex 2.

requirements, ranging from a discretionary 'reasonable' frequency of use to fixed thresholds as well as having mandatory clearing in active accounts at EU CCPs for certain products.[137]

In the meeting with Member States on 16 June 2022, Member States who expressed an opinion were either supportive of an active account requirement or open to look further into it, subject to certain conditions. In general, Member States highlighted that the details were important and proportionality should be respected.

Three Member States and one EU authority supported an active account requirement. Two of them and the EU authority said that such a requirement should focus on systemic clearing services, especially on services denominated in euro. Those Member States argued that an initial target should be set at the active account and re-evaluated and potentially be increased at a later stage. One of those Member States said that no volume requirements should be set at the beginning. Instead, qualitative measures should be used with quantitative measures following in a second stage. Another Member State expressed the view that quantitative thresholds should start with a rather low threshold and be re-calibrating further based on a detailed assessment of previous experiences. The same Member State suggested that not only clearing members but also a wider range of stakeholders should meet active account requirements. To take into account client clearing and its impact on proportionality aspects, clients with low exposures to third-country CCPs could be exempted from an active account requirement. A Member State suggested further to consider sanctions as an option where levels are not met and highlighted that it should not be supervisory authorities to set the threshold requirements. Five Member States indicated that they were open at the current stage. However, they argued that an active account requirement may mainly affect smaller parties and be burdensome. Therefore, these Member State indicated that first, costs related to an active account requirement would need to be considered and assessed before they could express an opinion. However, one EU authority explained that data cannot be shared easily due to data protection reasons. Two Member States expressed concerns that complexity may increase without much effect if only a qualitative requirement was introduced. One of these Member States highlighted the importance of appropriate supervision. One Member States explained that smaller market participants may be forced out of the EU by an active account requirement potentially leaving only big players in the market and causing concentration issues. The Member State explained that market making and clients of clearing members would need exceptions. One EU authority supported the introduction of active accounts and highlighted that active accounts as a backup plan would be insufficient to address elevated exposure levels to third-country CCPs and not lead to a risk reduction.[138]

As regards the specific objective to improve financial stability in the EU by reducing the excessive exposure to third-country CCPs, this option would not directly improve the attractiveness of EU CCPs, but could support its achievement in the long term. Indeed, it would oblige market participants to clear some of their trades at an EU CCP. EU CCPs would therefore face greater demand for their services and increase their liquidity. This could trigger a virtuous circle by which EU CCPs would be more pro-active in improving their offer and better tailor it to the needs of participants. Also, in potentially bringing more participants to EU CCPs and greater volumes, this option would improve liquidity at EU CCPs thus fostering their attractiveness and robustness. This option would be very

[137] See Annex 2, section on Active account.
[138] For Member States views see Annex 4.2 on Active accounts.

effective with respect to encouraging clearing in the EU, as it would require clearing at least a certain portion of trades in the EU.

This measure is therefore likely to promote better control of the risks related to market participants' excessive exposures to third-country CCPs, as it would ensure more clearing at an alternative EU CCP. However, it does not concern the EU supervisory framework directly and the way the increased cross-border risks in the EU, linked to incoming larger clearing volumes, would be managed. It would increase the need for an improved supervisory framework in the EU, due to the interconnectedness of the financial system in the EU as well as higher risks to be managed in the EU.

Coherence

This option explicitly requires market participants to clear some of their trades in the EU: it is thus fully coherent with the objective of this initiative to enhance clearing in the EU as a means to strengthen the prudential framework and financial stability. In addition, this measure actively supports financial stability objectives as it addresses directly the over-reliance on third-country CCPs, which is a possible source of financial stability issues. It also fully contributes to the objective of strengthening the CMU by developing more central clearing in the EU and with the Commission policy on open strategic autonomy.

Assessment of the impacts by stakeholder group

EU CCPs would benefit from this option as it would bring more clearing to the EU thus boosting revenues. This benefit would be ongoing. Third-country CCPs are likely to lose some business and this cost would be ongoing.

Most **clearing members** already have active accounts at EU CCPs, so there would not be additional operating costs for them. Also, according to some estimates EU clearing members can open an account for a client at an EU CCP in roughly 24 hours[139]. At the same time, the need to gradually increase the volumes cleared through the EU active account would require clearing members to plan accordingly to distribute their exposures between Tier 2 CCPs and EU CCPs in the most efficient way. Relocating a proportion of clearing activities will lead to a loss in netting benefits, at least in an initial phase. Nonetheless, the precise operationalisation of this requirement would be specified in a level 2 act that would be subject to a public consultation and cost-benefit analysis as required by the ESMA Regulation[140] in order to ensure careful calibration as well as a flexible approach. Other costs for clearing members may arise where direct clearing costs in the EU are higher than clearing in third-country CCPs. As discussed for banking measures, this aspect is currently difficult to predict and quantify as they depend on the level 2 calibration, which will be subject to a public consultation and cost benefit analysis. Furthermore, additional volumes cleared through EU CCPs are expected to increase efficiencies and thus lower direct clearing costs. Whether or not the costs identified would be ongoing will depend on how clearing members, CCPs and the overall clearing ecosystem will react and adjust to the requirements and what the long-term level of market fragmentation will be. Increased choice in clearing options will strengthen clearing members' resilience to market shocks and presents an ongoing benefit.

Clients that do not currently clear in the EU are likely to bear the costs of the obligation to keep an active account at an EU CCP. Roughly 60% of the EU clients of EU clearing members already have an account for clearing interest rate swaps at an EU CCP, and

[139] DG FISMA services estimates based on confidential information provided to DG FISMA.
[140] Article 10(1) of the ESMA Regulation, and in particular the third subparagraph thereof.

roughly 85% have one for credit default swaps[141]. For these clients opening an account at an EU CCP for these types of products would not be an additional cost. In addition, any cost could depend on which CCP they participate: in some EU CCPs, for example, the costs of an account per se are zero under certain conditions.[142] Nevertheless, there may be costs related, e.g. to the need for keeping accounts at two CCPs instead of one and for gradually increasing activity in the EU account. Clearing members are also likely to pass on any fees for participating in two CCPs to clients. Whether these costs would be ongoing or not depends also on the way clients would adjust to the requirements: e.g. such costs may prompt certain clients (particularly smaller ones) to decide to clear in the EU only, to decrease the burden; in such a case, the identified costs could be reduced overtime. Clients would also likely face increased costs due to lost netting benefits and are likely to bear any other costs faced by clearing members. Similar to clearing members, there would be an ongoing benefit for clients in terms of increased resilience.

National supervisory authorities will need to ensure firms' compliance with the requirement to have an active account. Such costs are likely to be limited though as they would be integrated in ongoing supervision, so the overall impact is neutral.

ESMA, and potentially the other ESAs, would need to be informed on firms' compliance with the requirement to have an active account at an EU CCP. While this may lead to limited additional costs (e.g. national supervisors reporting to ESMA/the ESAs information the former obtain through their ongoing supervisory activities), the provision of this additional information to these EU bodies will greatly facilitate performance of their tasks aimed at ensuring the EU financial stability.

7.2.3. Option B4 – Broaden the scope of clearing participants, i.e. public entities

Effectiveness in meeting the specific objectives

Some public entities, such as public debt management offices, are currently exempted from EMIR while others are only subject to reporting requirements. They can, however, clear centrally on a voluntary basis. Requiring public entities to clear centrally in the EU could contribute to increasing liquidity at EU CCPs, as it would broaden the base of clearing participants and would support the specific objective of encouraging clearing at EU CCPs.

As regards the specific objective of improving EU CCPs' attractiveness, more clearing by public entities could have a "signalling" effect for the markets: public entities clearing at EU CCPs would implicitly transmit to market participants confidence in EU CCPs, as the public sector would be relying on those infrastructures for clearing. In addition, by furthering liquidity at EU CCPs, public entities could contribute to making EU CCPs more attractive. CCPs and market infrastructures[143] responding to the targeted consultation pointed to these benefits (potential increase in liquidity, further diversification in participation to CCPs[144], strong signal to the market, contribute to harmonisation and consolidation). These arguments were supported by other market participants.[145]

[141] According to DG FISMA services' estimates based on confidential information.
[142] According to confidential information provided to DG FISMA services.
[143] 5 out of 7 respondents to the targeted consultation. See Annex 2.
[144] In the targeted consultation, 2 highlighted diversification and 2 harmonisation as a benefit.
[145] See Annex 2.

An important question to be considered is if public entities should be required to contribute to the default fund and to pay margins. Some stakeholders argued that public entities' special status may prohibit them from contributing to the default fund, as it may imply participation in mutualisation of losses stemming from the private sector.[146] In addition, if they were to post collateral, this could lead to wrong-way risk or even an increase in third-country collateral in EU CCPs. Also, posting collateral may counteract their public purpose, as collateral provision would add to their costs and that money could not be spent on their public purpose. Furthermore, public entities may be unable to assume liability for default fund contributions due to their specific mandate. Other stakeholders however claimed that if public entities do not post initial margins and default fund contributions, the private sector participating in a given CCP could be called on paying in case of the default of a participating public entity. While this argument may be of limited practical relevance, it shows that if public entities do not post collateral there may also be CCP participants which would not necessarily see public entities' participation in the CCP as an attractive feature as it may lead to an important amount of "unbalanced" exposure. In this case, clearing by public entities may not bring all the expected benefits in terms of increasing attractiveness of EU CCPs.

Concerning the specific objective of ensuring more robust consideration of cross-border risks, clearing by public entities would not specifically address this aspect, however it can indirectly contribute to reducing over-reliance on third-country CCPs.

Whilst a clearing obligation could be introduced under EMIR with some targeted changes, this could be challenged based on the aspects identified above. Hence, also other non-binding measures, such a Communication of Recommendation, could be used to communicate the aim for public entities to clear at EU CCPs to the extent possible to achieve a wider range of clearing participants and would support the specific objective of encouraging clearing at EU CCPs.

In the targeted consultation, Member States' public authorities were generally in favour of public entities centrally clearing if it remains voluntary[147]. The same holds true for most public entities[148] that would be concerned by a potential clearing obligation. They argued that market needs should prevail and – because of public entities' special mandate and status - a clearing obligation may bring additional risks and higher costs while not providing additional value. Moreover, due to their special mandate, public entities may be unable to assume liability for default fund contributions requiring specific conditions for public entities' access to central clearing which could increase risks for financial stability. Other stakeholders, notably banks, securities markets associations and pension scheme arrangements expressed the view that central clearing of public entities would not only improve liquidity but also give a clear and strong signal to the market about the confidence that EU public actors have in the robustness and reliability of the EU derivatives clearing eco-system. They underlined that a successful EU onshoring of the clearing of euro-denominated derivatives implies public support and incentives. Some suggested making central clearing mandatory depending on the size and mandate of the public entity. Other highlighted also that public entities may be unable to assume liability

[146] See Annex 2.

[147] 5 public authorities replied of which 3 mentioned explicitly that it should remain voluntary while one said that the impact would probably be limited and one argued that it would add to the attractiveness but that first the conditions would need to be assessed properly.

[148] 5 replied to the first question of the public entity section of which 4 expressed explicitly being in favour of central clearing to remain voluntary.

for default fund contributions and specific conditions for their participation may need to be considered. CCPs and market infrastructures also pointed to the benefits of public entities to centrally clear. Most, i.e. five out of seven respondents, highlighted an increase in liquidity and some[149] argued further that it would diversify clearing, give a strong signal to the market and contribute to harmonisation and consolidation and – as a consequence - improve financial stability.

In the meeting with Member States on 16 June 2022, four Member States expressed the view that clearing for public entities should stay voluntary. Three Member States favoured a recommendation for public entities that clear voluntarily to do so at an EU CCP. One EU authority supported this option too, but elaborated further that in their view only EU currency business should be captured. One Member State showed openness to this proposal and another Member State supported certain public entities being covered by the clearing obligation under EMIR. One Member State stated that collateral is the most important issue to consider in this context, pointing out that public entities posting their own collateral would lead to wrong way risk. Public entities not posting collateral at all would create an imbalance between clearing members and in both cases other clearing members would have to cover sovereign risks. Furthermore, it might force certain countries to buy assets from other countries for collateralisation purposes. Two other Member States supported this view.

Coherence

Clearing by public entities would contribute to the objective of encouraging clearing in the EU and making EU CCPs more attractive. This is also consistent with the objectives of the CMU. At the same time, requiring certain types of public entities that clear to post default fund contributions may be at odds with other EU policies, e.g. those aiming at minimising the costs to taxpayers stemming from private entities' defaults and more in general at minimising moral hazard.

Given the benefits and challenges mentioned regarding whether public entities should contribute to CCP default funds, the preferred option is to encourage public entities to centrally clear in EU CCPs rather than obliging them. To allow these bodies to accomplish their mission in the public interest. The Commission is aware that some public entities have chosen over the years to start clearing centrally their contracts on a voluntary basis. Central clearing brings with it greater safeguards in terms of counterparty credit risk, improves markets liquidity and adds transparency. Therefore, the Commission strongly encourages public authorities in the EU to clear at EU CCPs, should they decide to clear and where the products sought are available. Given this approach, the current rules on default fund contributions for public entities would continue to apply.

Assessment of the impacts by stakeholder group

EU CCPs would benefit from a larger clearing base, which would include public entities with high creditworthiness profiles and more liquidity. These benefits would be ongoing. However, CCPs may be perceived less safe if public entities were exempted from collateral provision regardless of their extent of public support, potentially creating high amounts of unidirectional exposure.

[149] 2 highlighted diversification and 2 harmonisation as a benefit.

Clearing members could see as an added value that public entities clear at EU CCPs, as this would be a signal of confidence in those CCPs. They could also be attracted and take advantage of the broader liquidity base public entities would contribute to creating (even if such a benefit could be somewhat reduced if public entities were exempted from participating in the CCPs' default management process). These benefits would be ongoing. The benefits for **clients** would be similar to those for clearing members.

Broadening the scope of clearing participants means that **national supervisors** will have to supervise additional participants' compliance with the clearing obligation. Participation of public entities to CCPs may also require the setting up of specific rules and procedures, by CCPs and national supervisors, to take into account the specificities clearing by such entities entails. These costs would be ongoing.

Public entities may face costs if they were to clear at a CCP. Central clearing could require them to post collateral: public entities may be exempted (as they currently are, at least in certain cases) from the requirement to post initial margins and default fund contributions, however they will need to post variation margins on their derivatives contracts. This situation is different from the current state of play in the bilateral space, where public entities clearing derivatives are not generally required to post margins because of their high creditworthiness;[150] in bilateral trades some public entities receive variation margins if the value of the contract changes in a favourable way for them, so that they are protected from the default of the counterparty, but they do not post themselves variation margins to the counterparty, because of their creditworthiness. As such, public entities would need to have appropriate liquidity management capacity to meet variation margin calls, including access to liquidity to an extent they may not have for the time being, or that may imply costs for the public (e.g. liquidity lines from Member States' central governments). This would be an ongoing cost. This cost could be transferred, e.g. to borrowers in the case of multilateral development banks. Public entities, especially if they do not already voluntarily clear at a CCP, would also face costs related to the operational setup to be put in place to clear derivatives at a CCP, including the development of the necessary IT infrastructure and expertise. This cost would be to a large extent one-off, but will require ongoing investments to ensure that the operational setup runs smoothly, e.g. for IT services in order to avoid cyber-attacks.

Public entities would need to prepare for central clearing, set-up appropriate arrangements and liquidity management strategies, possibly post margins and default fund contributions. If the costs from a clearing obligation were transferred to the public, **citizens** may bear costs which may be ongoing. In addition, should public entities be required to post default fund contributions, citizens may ultimately bear the cost of financing private entities' defaults. This cost would materialise only where a CCP would default, so it would be a contingent cost.

7.2.4. Option B5 – Facilitate clearing by clients

Effectiveness in meeting the specific objectives

This option would target entities subject to the clearing obligation which generally clear as clients, i.e. insurance companies, investment funds. It would facilitate or encourage clearing centrally at a CCP, as it would fix certain inconsistencies in the relevant sectoral legislation which today may hamper clearing by these entities.

[150] According to confidential information provided to DG FISMA services.

As regards insurance companies, risk-based capital requirements would be set out specifically for CCP exposures where they are direct clearing members at a CCP, thus making the approach in the Solvency II delegated acts[151] more consistent with the approach of banking legislation. Currently, the direct exposures of insurance companies to CCPs fall into a residual category of derivatives exposures. As the capital requirements for that residual category tend to be higher than for indirect CCP exposure (i.e. exposure to a CCP through a clearing member), the current approach impedes insurers from becoming a direct clearing participant in a CCP benefitting, e.g. from the access models set up in recent years by some EU CCPs to facilitate clearing by buy-side firms (including, e.g. PSAs).

As regards investment funds, facilitating clearing by clients would imply better consideration of the role of CCPs in reducing counterparty risks to which funds can be exposed. UCITS and MMF funds are allowed to invest in exchange-traded derivatives (ETDs) and OTC derivatives. Today, OTC derivatives are - unlike ETDs - subject to regulatory investment limits to mitigate counterparty risk. For example, Article 52(1) of Directive 2009/65/EC originates from 2009 and does not take into account the benefits of central clearing[152]. Two options were considered to promote central clearing in funds' derivative investments: (1) Replacing the previous distinction based on trading (ETD versus OTC) by a distinction based on the type of clearing (bilaterally versus centrally cleared via an authorised CCP) and adjust the regulatory limits to the reduced counterparty risks associated with central clearing; (2) Keeping the current criteria and adjusting only the counterparty risk limits associated with centrally-cleared OTC derivatives in accordance with the reduced risk. At this stage, option (1) would be preferred since it reflects the clearing system set out EMIR. It is most likely also easier to understand and to comply with, thus potentially reducing compliance costs for funds.

In addition, AIFM and UCITS management companies already have to establish risk management systems that include counterparty risks. As a general principle, it could be required that the use of central clearing and its precise design in the individual trade should be considered when measuring and mitigating counterparty risks.

This option would also require amending EMIR to require that relevant clearing members and clients, offering clearing services, could be required to inform their clients of the possibility to clear at an EU CCP to ensure that clearing members offer clients the possibility to clear at an EU CCP where an offer is available. Also, targeted changes to improve transparency could be achieved by requiring clearing members and clients to provide details on, e.g. collateral requirements, to their clients. Level 2 standards, notably an RTS could complement changes to EMIR to ensure a degree of standardisation and comparability.

All these measures are likely to facilitate and encourage clearing by clients, thus contributing to financial stability and potentially to the specific objective of encouraging clearing in the EU; however, these measures alone do not guarantee that increased clearing by clients takes place in the EU. As regards the specific objective of improving

[151] See footnote 4.

[152] Under Article 52 of the UCITS Directive, exposures to a counterparty in an OTC derivative shall not exceed 5% of the assets of a UCITS, or 10% if the counterparty is a credit institution. Under Article 17(4) of the MMFR, the counterparty risk stemming from OTC derivatives shall not exceed a limit of 5%. Notwithstanding these limits, the maximum exposure to the same entity acting as an issuer or a counterparty shall not exceed 20% pursuant to UCITS (Article 52(2) of UCITS Directive) and 15% for MMFs (this can be extended to 20% at Member States' discretion pursuant to Article 17(6) of MMFR).

the attractiveness of EU CCPs, as discussed for previous options, this one would not directly address this issue but can indirectly contribute to a virtuous circle. Concerning strengthening the framework to ensure better consideration of cross-border risks, similarly to previous options targeting the demand for clearing services, this one does not directly address this objective. At the same time, any increase in clearing volumes in the EU linked to the activity of clients should be better assessed and managed through an enhanced supervisory framework.

In the targeted consultation, respondents provided detailed views on the interaction of EMIR with other regulations/directives, including UCITS and MMFR, however on different aspects, not allowing for an extrapolation or generalisation. Examples of suggestions are the following: an industry association representing European CCPs, and an EU CCP, suggested amending Article 52 of the UCITS Directive to exclude CCP cleared transactions from counterparty exposure and diversification requirements, reflecting the risk reducing nature and systemic importance of CCPs. An industry association representing the funds industry of a Member State and an industry association representing the asset management and investment fund industry in another Member State called for an amendment of the ESMA Guidelines on ETFs and other UCITS issues so that UCITS can use the cash obtained via a repo transaction for the collateralisation of CCP clearing eligible OTC derivatives.

In the meeting with Member States on 16 June 2022, one Member State supported both options, for insurance companies as well as for UCITS. One EU authority expressed – in line with its opinion from 2015 - support for revising the exposure limits for OTC derivatives that are cleared centrally for UCITS. Two Member States were open to exploring both options further.

Coherence

These measures are fully coherent with the objectives of EMIR, which imposes prudential rules for CCPs and a clearing obligation as a way to reduce counterparty risk: in this sense, they contribute to promoting financial stability through central clearing. This is already clearly reflected in banking regulation (CRD/CRR), while not entirely so in insurance and funds regulation (the UCITS, AIFM, MMF and Solvency II delegated act). They also contribute to the objectives of the CMU, in that they would address certain impediments to efficiently use CCPs by clients. Finally, they would increase the overall consistency of the EU financial services acquis.

Assessment of the impacts by stakeholder group

CCPs would benefit from these measures as they would facilitate central clearing by clients. CCPs which have set up specific access models to facilitate clearing by market players that usually clear as clients (e.g. insurance companies) should benefit, as certain obstacles to the take-up of such models should be reduced or eliminated. These benefits would be ongoing.

Clearing members would not bear meaningful costs due to this measure. So the impact is seen as neutral. **Clients** would benefit from such measures as they would facilitate clearing and offer more opportunities to them, including through direct clearing membership. Exposures to CCPs would be treated more consistently in the relevant sectoral legislations, reflecting better the actual risk of such exposures. These benefits would be ongoing.

For **national supervisory authorities** and **ESMA**, no significant costs or benefits are identified.

7.2.5. Option B6 – Combination of all options

Effectiveness in meeting the specific objectives

Combining options 2, 3, 4 and 5 would allow to address over-reliance on Tier 2 CCPs, increase clearing in the EU and remove obstacles to clearing by market participants. The best combination of all options would include the following aspects: i) requiring clearing members and clients to hold an active account at EU CCPs; ii) clarifying the applicability of the Pillar 2 framework to manage identified excessive concentrations to CCPs and ensure compliance with the new requirements on clearing activities; iii) encouraging public entities that clear voluntarily to do so in the EU; iv) facilitating clearing by clients.

These measures would be implemented through targeted changes to the relevant legal instruments, with the exception of encouraging public entities to clear voluntarily at EU CCPs, where this measure could be better implemented by encouraging such public entities to clear in EU CCPs voluntarily, rather than by mandating this under EMIR. In addition, some of these measures may entail level 2 acts setting out the specific aspects, which would be subject to public consultations and individual cost/benefit analyses. One of those measures that would benefit from an RTS would be the obligation to clear certain transactions identified as substantially systemically important. The calibration and the specific features of the active account could be defined in an RTS where such calibration would aim to ensure a reduction in exposures to those clearing services offered by Tier 2 CCPs which are considered of substantial systemic importance pursuant to Article 25(2c) of EMIR. The RTS could also provide for a and further specify the reporting methodology to enable the monitoring of a reduction and to ensure that any measures are limited to what is necessary to achieve the objective, thus avoiding unintended side effects. Further, to ensure, where suitable, that the obligation to clear certain instruments at an EU CCP is reflecting the most recent status of ESMAs assessments identifying services being considered substantially systemically important pursuant to Article 25(2c) of EMIR, the Commission could also be empowered to make changes to the list of instruments subject to the requirement to be cleared at a certain proportion in an EU CCP. Due to the evolvement of clearing and to ensure the measures taken are proportionate to the concern identified, the implementation of the measures aimed at enhancing clearing at EU CCPs, including those calibrated in an RTS, could be monitored on an ongoing basis.

This option would achieve the specific objective of encouraging clearing in the EU to a greater extent than individual options thus reducing the risks to EU financial stability while considering the costs and other impacts on all actors concerned. It would gradually increase clearing volumes in EU CCPs, through mainly the active account measure foreseen under option B3. It would also establish a credible framework for ensuring compliance with the requirements by banks and investment firms - which are the most important financial counterparties, thereby supporting and reinforcing the effects expected through the implementation of option B3 by providing the necessary incentive structure to encourage the best possible use of multiple active accounts.

This option B6 is also the most suitable among those considered to avoid disruptive impacts on the business of EU clearing members and could be adapted to consider cost impacts for smaller clients if necessary. In particular, the portion of activity to be cleared through the active account could be designed to increase gradually, allowing the appropriate balance between financial stability and costs for businesses to be achieved. Similarly, the Pillar 2 framework offers the necessary flexibility to clearing participants and their competent authorities to be implemented proportionally, taking into

consideration the nature, size and complexity of the business model deployed by each participant. This would allow to spread the costs and help contain them. In this way, any costs related to losses in netting benefits (which would concern in particular market participants active in multiple currencies) could be mitigated overtime, access to clearing would be better preserved and the measures targeting the supply of clearing services in the EU could help this process. This will imply, though, that a rebalancing of exposures between EU and third-country CCPs takes place over time, during which it will be crucial that private-led initiatives accompany and reinforce the regulatory ones. Furthermore, by leading to greater clearing volumes at EU CCPs, this combination of options should enhance liquidity at EU CCPs and in turn foster their attractiveness and ability to compete.

As regards the specific objective of strengthening the framework to ensure better consideration of cross-border risks, as discussed in the previous sections, the increase in clearing volumes in the EU as a result of this option will need to be accompanied by enhanced assessment and management of cross-border risks.

Coherence

A discussed above, this option would fully contribute to the EU's policies on open strategic autonomy, CMU and preserve financial stability, as it would reduce over-reliance on third-country CCPs, enhance EU's capital markets and encourage clearing in the EU.

Assessment of the impacts by stakeholder group

EU CCPs would benefit from this option as it could bring more clearing to the EU. EU CCPs that have set up specific access models for buy-side firms could also benefit from initiatives facilitating clearing by clients. These benefits would be ongoing. **Third-country CCPs** may lose some business and this cost would be ongoing.

Most **clearing members** already have active accounts at EU CCPs, so there would not be significant additional operating costs for them. At the same time, the need to gradually increase the volumes cleared through the EU active account would require clearing members to plan accordingly to distribute their exposures between Tier 2 CCPs and EU CCPs in the most efficient way. This is likely to lead to some loss in netting benefits. Other costs for clearing members may arise in case clearing in the EU is more costly than clearing in third-country CCPs. This aspect is currently difficult to predict and quantify. Whether or not the costs identified would be ongoing also depends on how clearing members, CCPs and the overall clearing ecosystem will react and adjust to the requirements. Benefits for clearing members would relate to increased diversification of exposures to CCPs and reduced over-reliance on third-country CCPs. This would strengthen their resilience and would be an ongoing benefit.

Clients would also benefit from measures facilitating central clearing and these benefits would be ongoing. Roughly 60% of the European clients of EU clearing members already have an account for clearing interest rate swaps at an EU CCP, and roughly 85% do have one for credit default swaps.[153] So for these clients opening an account at an EU CCP for these types of products would not be an additional cost. In addition, any cost could depend on which CCP they participate: in some EU CCPs, for example, the costs of an account per se are zero under certain conditions.[154] Nevertheless, there may be

[153] According to DG FISMA services' estimates based on confidential data provided to DG FISMA services.
[154] According to confidential information provided to DG FISMA services.

costs related, e.g. to the need for keeping accounts at two CCPs instead of one and for gradually increasing activity in the EU account. Clients are also likely to bear the costs of clearing members any fees for participating in two CCPs. Whether these costs would be ongoing or not depends also on the way clients would adjust to the requirements: e.g. such costs may prompt certain clients (particularly smaller ones) to decide to clear in the EU only, to decrease the burden; in such a case, the identified costs could be reduced overtime. Clients are also likely to bear any other costs faced by clearing members, at least as long as clearing members face such costs. Similar to clearing members, benefits for clients would relate to reduced over-reliance on third-country CCPs. This would be an ongoing benefit. Finally, clients will benefit from the specific option targeting them, i.e. the changes in funds and insurance frameworks, as discussed above. These benefits would be ongoing.

As in other cases that new requirements are imposed, limited costs for **supervisors** (including the SSM) would arise in terms of checking that such requirements are met. However, the overall effects are likely to be small as such costs would be integrated in ongoing supervision, so overall the impact is seen as neutral.

ESMA and the ESAs may have a role in the general monitoring of developments linked to these measures through a cross-sectoral monitoring mechanism (see Section 7.3.1). These costs would be ongoing.

7.2.6. Choice of preferred option

Option B2 would only partially meet the objective of encouraging clearing in the EU, as while the relevant measures would limit or dis-incentivise banks' excessive concentration of exposures towards CCPs, but would not be sufficient to ensure that over reliance on third-country CCPs is reduced. In addition, while this option targets the most important clearing members, the related costs need to be carefully considered. Consequently, the sub-option relying on the Pillar 2 framework is considered to be the most suitable and flexible enough to take into account individual circumstances. Option B3 would contribute to meeting the objective, as it would require EU participants to hold an active account at an EU CCP with increasing volumes. While this option could imply some costs for market participants, its actual cost impact will depend on the calibration and on how the market will adjust to the requirement overtime. Options B4 and B5 would also help meet the specific objective of encouraging clearing in the EU by requiring clearing member and clients offering clearing services to inform clients about the possibility to clear in an EU CCP and to improve transparency towards clients on collateral requirements. However, they would not be sufficient on their own to fully meet the objective, as they target only certain actors, are measures merely designed to improve and enable clearing in EU CCPs, and, as regards the measures targeting insurance companies and investment funds, they would not be sufficient per se to ensure that clearing happens at EU CCPs. The impact of these options in terms of costs is expected to be limited. The combination of options B2 (Pillar 2 sub-option) to B5, i.e. **Option B6**, would be the most effective in meeting the specific objective of encouraging clearing in the EU and is likely to have the lowest costs among all options assessed, as discussed above. Such costs and their evolution (i.e. possible decrease) overtime will depend on the calibration of the demand measures (through a level 2 measure. i.e. an RTS to be adopted by the Commission on the basis of the draft RTS submitted by ESMA, for the active account), which will need to strike the balance between achieving the financial stability objectives and minimising costs for market participants (e.g. by requiring a gradual increase overtime of the activity in the account). The use of level 2 technical rules, which are subject to public consultations and cost-benefit analysis, would also provide a degree

of flexibility; the impact of these measures would be subject to close monitoring by a Joint Monitoring Mechanism, consisting of the ESAs, ECB, SSM and ESRB, to ensure that there are no unintended side effects. In the event such unintended side effects ensue, the technical requirements could be easily adjusted at the initiative of ESMA to mitigate any unintended side effects. This option would also contribute to the CMU and open strategic autonomy initiatives, as well as financial stability objectives. Hence, it is the preferred policy option.

	Effectiveness			Efficiency (cost-effectiveness)	Coherence
	Improve attractiveness of EU CCPs	Encourage clearing in EU CCPs	Enhance the assessment and management of cross-border risks		
Option B2	0/+	+	+	-/--	+
Option B3	+	+++	+	-	++
Option B4	+	++	0	-	+/-
Option B5	+	0	0/+	++	++
Option B6	+	+++	+	--	++

	Summary of winners and losers			
	CCPs	Clearing Members	Clients	Supervisory authorities
Option B2	+/-	--	-	0/+
Option B3	+/-	0	-	0/+
Option B4	+	0	**0**	0/-
Option B5	++	**0**	++	**0**/+
Option B6	+	-	-	**0**/+

Legend: +++ = Very positive ++ = Positive + = Slightly positive +/- = Mixed effect **0** = no effect - = Slightly negative -- = Negative --- = very negative

7.3. C - Measures to enhance the assessment and management of cross-border risk

7.3.1. Option C2: Targeted amendments to current supervisory framework

Effectiveness in meeting the specific objectives

This initiative should, over time, lead to additional volumes of clearing in the EU, increased activities in certain EU CCPs and thus increased cross-border activity in the EU. This option would effectively meet the specific objectives of ensuring a more robust consideration of cross-border risks, and thus enhanced EU financial stability, for three reasons.

First, it would provide EU authorities with an increased say in the ongoing supervision of EU CCPs by NCAs who retain the supervisory responsibility for CCPs authorised in their jurisdiction. This could be done by strengthening EU input in the adoption of decisions by NCAs (e.g. by extending the supervisory areas for which an ESMA opinion is required, such as withdrawal of authorisation, annual review and evaluation). ESMA could also be given the possibility to publish the fact that an NCA has not complied with an ESMA opinion. Another option would be to give the right to central banks of issue to participate to the CCP Supervisory Committee meetings on more topics. As such, EU authorities could better ensure that the same financial stability considerations are applied in the supervision of all EU CCPs; at the same time, it would be clear that the CCP's competent authority remains responsible for the CCP's supervision. To have ESMA (and the college) assessing relevant aspects, with a particular focus on cross-border elements

at the same time as the CCP's competent authority, would ensure convergence in supervision and that the overall timeline of the overall procedures does not increase.

Second, joint supervisory teams consisting of the competent authority, ESMA and certain members of the college could be set up to assist on certain aspects, such as providing input on specific supervisory matters and participating to onsite inspections. In meetings with Member States, a few Member States expressed concerns due to potential challenges of ensuring clearly defined roles and responsibilities.

Third, ESMA's powers in case of emergency situations could be enhanced; it could be entrusted with coordinating responses to a crisis and empowered to request relevant information directly from market participants and to establish effective practices to address and share information on emerging risks. This would also help to speed up the EU response, clarify expectations regarding data sharing and availability for the relevant authorities and supervised CCPs, reduce the potential risk of conflicting approaches and promote convergence of crisis management responses. ESMA could also be provided the possibility to issue recommendations if certain conditions are met, e.g. the emergency affects more than one CCPs or in case of Union-wide events destabilising cross-border cleared markets. Several Member States indicated their support for strengthening ESMA's coordinating function in emergency situations.[155]

Fourth, the establishment of a Joint Monitoring Mechanism (comprising amongst others the ESAs, the ECB, the SSM, the ESRB and the Commission) to monitor at EU level the transfer of EU firms' excessive exposures from Tier 2 CCPs to EU CCPs; contribute to the development of Union-wide assessments of the resilience of CCPs focussing on liquidity risks concerning CCPs, clearing members and clients; identify concentration risks, in particular in client clearing, due to the integration of EU financial markets, including where several CCPs, clearing members or clients use the same service providers; monitor the effectiveness of the measures aimed at improving the attractiveness of EU CCPs, encouraging clearing at EU CCPs and enhancing the monitoring of cross-border risks. ESMA, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, could be requested to submit an annual report on the results of their monitoring activity. In addition, if ESMA were to identify that national authorities fail to ensure compliance with potential requirements on clearing at EU CCPs, it could issue guidelines or recommendations or launch a breach of Union law procedure. Finally, ESMA could also be requested to monitor and keep under review the proportion of the activity to be cleared in active account at EU CCPs. In meetings with Member States, several indicated their support for introducing a stronger cross-sectoral monitoring mechanism for the EU's exposures to Tier 2 CCPs. [156] In addition, by streamlining procedures and clarifying the roles of various authorities involved in the supervision of EU CCPs, this option would render the framework simpler and less costly for all actors involved, and improve the attractiveness of EU CCPs by addressing the drivers linked to these objectives.

Coherence

This option is coherent with the current EMIR framework, as it builds upon the already foreseen arrangements under EMIR 2.2 and with the 2020 CMU Action Plan, which highlights the need for a more integrated post-trading landscape in the EU while noting that the Commission will consider proposing measures for stronger supervisory

[155] See Annex 2.
[156] See Annex 2.

coordination or direct supervision by the ESAs. Finally, it would increase the overall consistency in the application of the EU rules on financial services.

Assessment of the impacts by stakeholder group

By streamlining the procedures and various authorities' role, **EU CCPs** would be subject to more effective, convergent and thus efficient supervisory arrangements. The option would decrease the costs that CCPs incur due to duplicative or contradicting rules and the lack of supervisory convergence. As such, they would be more able to compete internationally and in the EU. A more efficient and effective supervisory framework also contributes to enhanced EU financial stability. These benefits would be ongoing. In addition, the changes aimed at enhancing the authorities' capacity to monitor cross-border risks, cooperate and act in emergency situations would benefit EU CCPs as their operations would be safer.

Through this option's benefits for EU CCPs, **clearing members** could benefit from greater offer by CCPs in a faster way, and would thus have more choices where to clear. The reduction of regulatory costs for CCPs could imply a reduction of the costs for clearing also for clearing members. In addition, clearing members would benefit from a safer environment for their operations, including because of the changes aimed at ensuring better monitoring of cross-border risks. These benefits would be ongoing.

As for clearing members, **clients** would also be able to benefit from greater offer by CCPs in a faster way, and would thus have more choices where to clear. The reduction of regulatory costs for CCPs would imply a reduction of costs also for clients, provided there is competition between CCPs in the medium term and cost benefits are passed on. In addition, they would benefit from a safer environment for their operations, including those changes aiming to improve the monitoring of cross-border risks. These benefits would be ongoing.

The proposed new arrangements would take more account of the mandates of **national supervisory authorities** and central banks of issue by strengthening their input to the supervisory process, relative to the situation today. This option would help to clarify the different roles of ESMA and the colleges, which had been criticised as being unclear or duplicative by respondents to the targeted consultation. The establishment of joint supervisory teams would further enhance supervisory convergence and would ensure knowledge sharing between supervisors at national and EU level. By having ESMA, national supervisors and central banks share responsibilities in a more coherent arrangement, this option would allow for a more holistic supervision of CCPs which responds better to the increasingly systemic nature of these infrastructures in the EU financial system. These benefits would be ongoing. Finally, this option ensures that Member States, that are ultimately responsible for helping financially a failing CCP established in their jurisdiction, continue to be ultimately responsible also for taking decisions in relation to its ongoing supervision. Regarding costs, one-off adjustment costs to modify the procedures and tools used at national level when cooperating with ESMA and other supervisors may be needed. In addition, recurring costs may stem from NCAs' staff cooperation with other authorities (e.g. in joint supervisory teams). However, the simplification of procedures should help reduce these costs.

This option would strengthen **ESMA's** input in the ongoing supervision of EU CCPs, allowing it to further build its supervisory capacity. ESMA may incur additional costs from the revised supervisory arrangements, one-off (e.g. setting up of procedures and tools for the cooperation of authorities in the context of the joint supervisory teams and the cross-sectoral monitoring mechanism) and recurring (e.g. participation to joint

supervisory teams, increase of the supervisory areas for which an ESMA opinion is required, or operation of the cross-sectoral monitoring mechanism). For example, under the existing budgetary arrangements, ESMA estimates that to make the process more efficient and effective for its current tasks it needs 2.5 FTEs per year for the issuance of approximately 9 opinions; 3 FTEs per year for model validations; 2.5 FTEs per year for participation to CCP colleges.[157] If ESMA's tasks are expanded or increased in number, it can be expected that additional resources may be required. However, considering that ESMA has already experience in the supervision of CCPs and that its regulatory work in this area to a significant extent is completed, it can be expected that such additional resources can be addressed by reallocating existing staff. One option could be to cover some of these additional costs through fees to EU CCPs.

This option would strengthen the input of **central banks of issue** in the ongoing supervision of EU CCPs, thereby ensuring that they have more adequate information on the operation of CCPs which is essential considering the role of the latter in the conduct of monetary policy. While this option might entail some additional costs for central banks of issue (e.g. if they are granted with the right to participate to the CCP Supervisory Committee on a broader range of topics), these could be counterbalanced by the increased knowledge-sharing and elimination of the need to submit duplicative requests for information to supervised entities.

7.3.2. Option C3: Centralise EU CCP supervision

Effectiveness in meeting the specific objectives

A single authority, ESMA, would responsible for the supervision of some or all EU CCPs. While ESMA could be required to cooperate closely with other bodies, e.g. the ESCB, none of them would have binding powers over the single supervisor. For those CCPs under ESMA's direct supervision, this option would eliminate the problems arising from authorities' inefficient supervisory cooperation and ensure full supervisory convergence throughout the EU. As such, it would simplify the current burdensome procedures and reduce costs for EU CCPs, directly contributing, and to a greater extent than option 2, to the objective of enhancing EU CCPs' attractiveness. In addition, a single supervisor would have direct access to all necessary supervisory information and would be competent to take all supervisory decisions; consequently, cross-border risks would be considered and effectively addressed more than in option 2, ensuring EU financial stability. This option would require changes under EMIR as this would change the supervision model currently set out therein. There could also be a need for level 2 acts, such as RTSs and ITSs, to further establish details as to such supervisory approach.

The final responsibility for managing an ailing CCP remains at national level: while under the CCP Recovery and Resolution Regulation a CCP failure first needs to be addressed by using the CCP's own resources as well as contributions from its clearing members which may be located throughout the EU (and beyond), Member States may in specific circumstances support financially failing CCPs. As such, this option may be perceived at this point as splitting supervisory and fiscal responsibilities. To address this, it may be necessary to also review the CCP Recovery and Resolution Regulation.

In the meeting with Member States on 16 June 2022, several Member States argued that that supervision should not be fundamentally changed by granting ESMA with the power to supervise directly some or all EU CCPs. Two of them stated that fiscal responsibility

[157] See footnote 55.

should go hand in hand with supervisory responsibility and therefore were clearly against the supervision of all or certain EU CCPs at EU level. According to stakeholders responding to the targeted consultation (including a public authority and a non-EU CCP), the benefits of a stronger EU supervision could be uniformity of supervisory practices and outcomes. Those against a stronger EU supervision (two public authorities, an EU CCP, a central bank) argued that it would not reduce costs, as costs were a result of the EMIR regulatory requirements and therefore unrelated to the level at which supervision is exercised. In addition, it was mentioned that ESMA may not be best placed to deal with interpretation of national law.

Coherence

This option is coherent with the CMU 2020 Action Plan, which highlights the need to develop a more integrated EU post-trading landscape and states that if there are indications that the supervisory set-up is inadequate for the desired level of market integration, stronger supervisory coordination or direct supervision by the ESAs should be considered. It is also coherent with the approach for third-country CCPs, and particularly Tier 2 CCPs over which ESMA has direct supervisory powers, and for other financial institutions for which ESMA has already been granted direct supervisory powers (e.g. for credit rating agencies and trade repositories). Nonetheless, it may be seen as inconsistent with the architecture under the CCP Recovery and Resolution Regulation, whereby decisions for CCPs in distress are taken at national level and Member States may be called upon to contribute for failing CCPs; a review of that Regulation may also be required.

Costs and benefits by stakeholder group

By addressing inefficiencies of the supervisory framework, mainly the complex arrangements between authorities that lead to long and burdensome procedures, **CCPs** could launch new products or adapt their models quicker. They would no longer face divergent supervisory practices and an increased level playing field amongst all CCPs would be ensured. CCPs would thus benefit from a reduction of costs when operating in the EU. There would also be a better management of cross-border risks, which would make CCPs' operations safer. These benefits would be ongoing, and greater than in Option 2. If however the costs of EU supervision were passed to CCPs, they could face higher costs (to the extent that they are not subject to national supervisory fees or where national supervisory fees are lower) which could impact their attractiveness. EU CCPs who are currently subject to national fees may however potentially profit from reduced fees; as only one or two CCPs are established in a single Member State, a single supervisor should be able to reduce the supervisory costs for each CCP because of its economies of scale.

Clearing members and **clients** could benefit from a wider offer by CCPs quicker, and would have more choices where to clear. They would also benefit from a safer environment for their operations following the changes to ensure a better monitoring of cross-border risks. These benefits would be ongoing and greater than in Option 2. Nonetheless, should EU CCPs be required to pay supervisory fees, such costs could be passed on to clearing members; these costs would be ongoing.

The costs for **NCAs** would be significantly reduced, as authorisation and supervisory powers would be moved at EU level. Staff from national authorities could also move to the EU supervisor, either permanently or on a seconded basis.

This option would imply significant costs for **ESMA**, one-off (e.g. setting up procedures and tools to assume the role of the single supervisor and for cooperating, to the extent

necessary, with other authorities) and recurrent (significant extension of supervisory capacity in ESMA, operation of the single supervisor). These costs would be ongoing and could be covered via fees on EU CCPs that could potentially range from EUR 9 912 000 to EUR 23 260 000 for all of them depending on, e.g. each CCP's size, complexity of activities, etc.[158]

This option would strengthen the input of **central banks of issue** in the ongoing supervision of EU CCPs, thereby ensuring that they have more adequate information on the operation of CCPs which is essential considering the role of the latter in the conduct of monetary policy. While this option might entail some additional costs for central banks of issue (e.g. if they are granted with the right to participate to the CCP Supervisory Committee on a broader range of topics), these could be counterbalanced by the increased knowledge-sharing and the elimination of the need for them to submit separate requests for information to the supervised entities.

7.3.3. Choice of preferred policy option

In view of the political priority of the review to strengthen the framework for robust consideration of cross-border risks, and enhance EU financial stability, as well as improve the attractiveness of EU CCPs, while acknowledging that resolution decisions impacting CCPs, clearing members and clients are taken at national level and Member States remain eventually responsible for supporting financially CCPs authorised in their jurisdiction, **Option 2** is deemed more appropriate and proportionate at this point in time as it attains the right balance between achieving the aforementioned objectives.

	Effectiveness			Efficiency (cost-effectiveness)	Coherence
	Improve the attractiveness of EU CCPs	Encourage clearing in EU CCPs	Enhance the assessment and management of cross-border risks		
Option C2	++	+-	++	++	++
Option C3	++	+-	+++	+/-	+-

	Summary of winners and losers			
	CCPs	Clearing Members	Clients	National supervisory authorities
Option C2	++	++	++	++
Option C3	+-	++	++	--

Legend: **+++** = Very positive **++** = Positive **+** = Slightly positive **+/-** = Mixed effect **0** = no effect **-** = Slightly negative **--** = Negative **---** = very negative

8. PREFERRED OPTIONS

8.1. Summary of the preferred package

Section 7 analyses and compares the policy options and establishes a preferred option for each objective considered in this impact assessment. This section considers why the preferred options strike the appropriate balance between effectiveness and costs, hence are the most proportionate and efficient one in the long run.

Supply side measures: Option A4 (**combination of Options A2** (**simplify procedures**) **and** A**3 (introduce ex-post procedures**) **is the preferred option**. It helps achieve the specific objectives of improving the attractiveness of EU CCPs by allowing them to

[158] FISMA estimates based on confidential information provided to DG FISMA services.

expand their offer or adjust their risk models in a faster and more efficient manner. These will reduce expenses linked to regulatory compliance without compromising the safety of CCPs' operations. By enabling EU CCPs to respond sooner to market demands, it could help attract clearing business to the EU, particularly in new products and/or asset classes, reinforcing demand side measures. These options would require an amendment of EMIR, which currently sets out the relevant procedures. They should, however, be complemented by technical rules to, e.g. specify the documentation to be provided and its format in order to provide legal certainty to CCPs and offer greater clarity and predictability, thus further shortening the processes.

Demand side measures: Option B6 (combination of all options, i.e. disincentivise participants' excessive exposures to CCPs through Pillar 2 measures, require an active account at EU CCPs, broaden the scope of market participants clearing in the EU, facilitate clearing by clients) is the preferred option. It will foster greater demand for clearing in EU CCPs and a corresponding reduction in the over-reliance on systemic third-country CCPs, contributing to the overarching goal of preserving EU financial stability while leaving enough flexibility to minimise the measures' potential costs through a proportionate approach. The greater demand for clearing services provided by EU CCPs would be reinforced by the aforementioned measures on the supply side paving the way for market-led initiatives. This, together with the specific design of the active account measure (e.g. gradual increase) can contribute to minimising costs for clearing participants. Simultaneously, this increases the need to strengthen EU CCP supervision in the single market.

These measures would require a combination of different tools. Legislative changes would be required in EMIR and CRR to introduce the active account requirement and the Pillar 2 measures as well as technical rules (level 2 acts, RTS to be adopted by the Commission following a draft proposed by ESMA) to specify the operational implementation of certain rules. Measures to facilitate client clearing, would also, in some cases, require targeted modifications of level 1, notably the UCITS Directive, the MMF Regulation and EMIR. ESMA, and the other EU bodies, will consult before proposing the relevant rules. It is understood that those entities would have access to more data than the Commission, and thus would be able to ensure careful and appropriate calibrations in the level 2 acts to ensure they would have the desired impact, while at the same time mitigating, to the extent possible, costs and benefits. Finally, as concerns measures to broaden the scope of clearing by public entities, this is something that could be implemented in a binding form through legislation, however it may be more appropriate, as a first step, to communicate in a non-binding manner on the needs for such action.

Strengthened supervision: Option C2 (targeted amendments to the current supervisory framework) is the preferred option. The analysis shows it is the most efficient, albeit not necessarily the most effective, option to enhance the assessment and management of cross-border risks. It is also politically more feasible and reduces concerns of certain Member States that their powers may be reduced and that centralised EU supervision would not be consistent with the fact that ultimately the responsibility for potentially supporting a CCP in a crisis remains with that CCP's Member State of establishment. These options would require an amendment of EMIR, which currently sets out the supervisory framework for EU CCPs to introduce targeted changes on supervision and emergency management, and to include the new functions of the joint supervisory teams to assist on certain aspects of the supervision and the joint monitoring mechanism established to assess the overall clearing in EU CCPs, aspects related to

client clearing and union-wide assessment. ESMA, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, could be requested to submit an annual report on the results of their monitoring activity to the European Parliament, the Council and the Commission.

8.2. Combined impacts

8.2.1. Overall impact of the package on relevant stakeholders

The overall package of options will have a positive effect, by improving the attractiveness of EU CCPs and safeguarding EU financial stability and in a cross-border context, reducing the over-reliance on third-country CCPs and contributing to deepening the CMU.

EU CCPs will benefit first from the increased clearing flows from existing and new participants due to the measures boosting the demand for EU clearing. Such a rise in the liquidity might attract flows that are not targeted as part of this initiative but for which a spiral effect could be spurred: more liquidity at EU CCPs will make them more attractive, thus in turn potentially attracting further market participants. Second, the measures aimed at addressing the supply side will allow EU CCPs to bring new products to the market and adapt their risk models quicker than today. This will benefit CCPs' revenues and enable their timely reaction to changed risk situations. It will also help CCPs in facing and adapting to the incoming pressure of new business from third-country CCPs. CCPs will also benefit from lower compliance costs as approval procedures will be streamlined and more clarity on the overall process will be provided while they will have greater certainty as to the time required for their initiatives to become operational, reducing existing disincentives to offer new products. Moreover, some CCPs may profit from lower supervisory fees by their NCAs and overall costs as a result of the possibility to follow a fast-track procedure for the authorisation/validation of certain initiatives. Competition in and outside the EU will thus be improved. Third, by strengthening the supervisory framework, EU CCPs would be subject to more effective and convergent arrangements. This would decrease the costs CCPs incur due to duplicative or contradicting rules and the lack of supervisory convergence. In addition, changes aimed at enhancing the authorities' capacity to monitor cross-border risks, cooperate and act in emergency situations would benefit EU CCPs as their operations would be made safer. All benefits would be ongoing.

Clearing members will benefit from greater offer by CCPs, in a faster way, and will have more choices where to clear. The increased competition amongst CCPs could trigger a virtuous circle with increasing opportunities for clearing members. The reduction of regulatory costs incurred by CCPs may also lead to a reduced cost of clearing for clearing members, provided that there is competition between CCPs and cost savings are passed on to members. Clarity over CCPs' launch dates for a specific service or activity would reduce legal uncertainty and additional implementation costs (e.g. IT changes, maintaining a dual CCP set-up, changes of procedures and contracts with clients) for clearing members. Increased competition amongst CCPs, either on a cross-border basis or within the EU, shall contribute to lower clearing prices. It is unlikely that the measures taken under this initiative lead to disruptive and inefficient market fragmentation given their progressive and proportionate nature as well as the reasonable objective set. One can again note that, e.g. for the clearing of US dollar-denominated interest rate derivatives, clearing members are satisfied with the existence of two competing CCPs sharing the market in a fluctuating and balanced manner. In a similar manner, it is unlikely that the proposal leads to undue concentration in EU CCPs. Were

this to happen, the proposed measures also increase the supervisory framework within the EU, making it an even better place to be concentrated in than in third countries. These benefits would be ongoing.

The measures aimed at increasing the demand side for EU clearing services (Pillar 2 measures, requirement to have an active account at an EU CCP) will also entail costs for EU clearing participants. The size of those costs will depend on whether a clearing member, and even more so a client, is already set up to clear in EU CCPs or not. The vast majority of clearing members already seem to have accounts at EU CCPs. As regards clients, estimates are that around 60% of European clients of EU clearing members already have accounts ready to use in the EU for interest rate swaps and around 85% do for credit default swaps.[159] In addition, depending on the EU CCP where the account needs to be open, costs may vary as, e.g. some EU CCPs are offering to open an account for free[160]. Other running costs, which can arise in the form of lower liquidity and lost netting benefits, will depend on the calibration and design of the demand-side measures. There is a key trade-off between the effectiveness of measures to increase clearing at EU CCPs and the cost impact on clearing participants, and this trade-off can be considered in the calibration and design of the measures themselves, so as to make costs proportionate (e.g. the further specification of certain requirements through RTSs ensures that ESMA makes the relevant proposals after consulting, where relevant, other EU bodies such as the ESCB and the ESAs that have access to relevant supervisory data and after having conducted a public consultation and a cost-benefit analysis). There will be a benefit however in the form of increased diversification of exposures to CCPs, greater choice where to clear, reduced over-reliance on third-country CCPs and, as such, from increased financial stability in the EU. Finally, measures aimed at strengthening the EU supervisory framework would also allow clearing members to benefit from greater offer by CCPs in a faster way, and would thus have more choices where to clear. The reduction of regulatory costs for CCPs could imply a reduction of the costs for clearing also for clearing members. In addition, clearing members would benefit from a safer environment for their operations following the changes to improve the monitoring of cross-border risks. These benefits would be ongoing.

Clients will benefit from the package in various ways. First, the preferred policy options will give them an alternative offer to non-EU CCPs. This will provide more choice and increased competition which may result overall in reduced costs. Moreover, the options retained will ensure clients have better access to EU CCPs by giving them a transparent EU CCP offer by direct and indirect clearing members and allowing them to benefit from new CCPs' access models more easily. The proposed approach is also proportionate and avoids disproportionate costs to end clients while preserving financial stability and deepening CMU, given that estimates are that around 60% of EU clients already have account at an EU CCP. Options to address the demand side of the problem are expected to facilitate central clearing and reduce over-reliance on third-country CCPs, thereby strengthening clients' resilience. However, in particular clients that do not currently clear in the EU, or who clear in the EU but not to the extent required for an account to be considered active, will bear some costs under the obligation to keep an active account at an EU CCP. Whether these costs would be ongoing or not depends on the precise calibration of the requirements and on the way market participants would adjust to them, which will also impact netting efficiencies at EU CCPs. More in general, clients are also

[159] Confidential data provided to DG FISMA services.
[160] Confidential information provided to DG FISMA services.

likely to bear any additional costs faced by clearing members under the proposed measures, at least as long as clearing members do face such costs.

Under the preferred policy options, **ESMA** may incur limited additional costs but would benefit from a strengthened supervisory environment due to additional responsibilities it will be given. In terms of costs, ESMA would mainly be impacted by the additional supervisory tasks provided for under the policy options as well as the various pieces of secondary legislation it might be empowered to develop. On the one hand, certain preferred policy options should lead to the reduction or simplification of ESMA's work (e.g. streamlining of procedures, standardisation of documentation submitted to ESMA). Overall, ESMA would benefit from having a clearer overview on EU CCPs and relevant financial stability risks.

The impact of the preferred options on **NCAs** would be limited but generally positive. Some of their supervisory tasks will be simplified, and some of the procedures will be streamlined and specified, therefore authorities will benefit from reduced interactions with CCPs for additional documentation and a better flow of communication between CCPs, the college and ESMA. The initial costs of setting up the new procedures, e.g. the development of new IT tools, will be minimal compared to the benefits provided. Some costs may be shared across authorities and ESMA. Some limited costs for supervisors (including the SSM) could arise from checking that compliance with requirements introduced to address the demand-side of the problem. As such costs are expected to be small and would be integrated in ongoing supervision, the overall impact could be seen as neutral. The use of IT tools is also coherent with the "digital by default" principle.

Finally, the measures taken to reduce the over-reliance on systemically important **third-country CCPs** are likely to have a negative impact on these CCPs as some of the clearing business, at least from EU market participants, is meant to move away from them. It could however as well be a benefit for other non-systemically important third-country CCPs which could inherit those flows, including by proactively attracting them.

8.2.2. Impact on financial stability

The combination of preferred options has a positive impact on financial stability which is a societal benefit. By making EU CCPs more attractive while ensuring appropriate supervision, the EU's overreliance on third-country CCPs can be reduced. This has a positive impact on financial stability by: (i) reducing CCPs' concentration rates (ii) ensuring effective alternative clearing solutions are available in case of market stress, with reduced frictional costs in case this would require a massive shift of positions towards EU CCPs, and (iii) ensuring that EU supervisors are given adequate powers and monitoring capabilities.

More specifically, by increasing the attractiveness of the EU as a clearing hub, the preferred policy options address the financial stability risks that arise from EU firms' overreliance on Tier 2 CCPs. EU authorities have limited means for protecting EU firms that use a third-country CCP's services in times of stress, as they have no control over the situation. Reducing EU firms' overreliance on Tier 2 CCPs will have a directly positive impact on financial stability, especially as this will be combined with changes in the EU supervisory framework aiming at ensuring better consideration of cross-border risks in the EU. Indeed, the introduction of targeted amendments in the EU supervisory framework to ensure increased input of EU authorities in the supervision of EU CCPs and the granting of powers to ESMA in emergency situations aim at making certain that supervisory decisions are taken, more than today, with a systemic pan-EU perspective.

8.2.3. Impact on small and medium sized enterprises

This initiative does not have any direct or specific impacts on SMEs. Like other businesses, SMEs will benefit from the greater consideration of cross-border risks in the EU. By enhancing financial stability, this initiative would reduce the potential for negative knock-on effects of a crisis affecting the financial sector, e.g. reduced capacity of the banking sector to provide financing to the real economy, recessions etc. that tend to more heavily impact SMEs. SMEs may also indirectly benefit from the increased attractiveness of EU CCPs. This initiative should help promote further the use of central clearing and facilitate SMEs' ability to hedge their transactions or invest. The proposal will thus contribute to deepening the CMU. There will be some negative impacts on SMEs in the short-to-medium run; they are similar to those for financial counterparties (e.g. less netting benefits) but will be smaller in absolute terms for SMEs than for larger corporates given the limited outstanding positions of most SMEs. These costs would be smaller in absolute terms for SMEs than for larger corporates given the limited outstanding positions of most SMEs – although this does not necessarily imply that such impacts would be negligible.

8.2.4. Social and environmental impact

The proposed options are not expected to have any material negative social impact. Some indirect positive social impacts are also expected. First, the enhancement of EU CCPs' attractiveness will contribute to the CMU. As a result, more jobs could be created, e.g. at EU CCPs, which would have greater business flows and potentially increase the scope of their activities. The broader development of EU markets may lead to positive effects on employment. Second, the improved level of financial stability following better consideration of cross-border risks will contribute to better protection of the EU economy from contagion and feedback loops in case of a crisis, contributing to minimising the impact of a shock on jobs. No impact on fundamental rights is expected and only limited impact on SDG no. 8 (see Annex 3, "Relevant sustainable development goals").

This initiative has no direct and/or identifiable impacts leading to significant harm or inconsistencies with the climate-neutrality objectives and the obligations arising out of the European Climate Law.

8.2.5. Impact on the EU budget

The preferred package should not have any implications for the EU budget. Additional tasks may arise for ESMA (e.g. technical standards, stronger role in emergency situations, opinions in additional areas, participation in joint supervisory teams) and the other ESAs (e.g. establishment of a cross-sectoral mechanism monitoring the transfer of excessive exposures from Tier 2 to EU CCPs). Due to reduced regulatory work for ESMA on other CCP files (e.g. under the CCP Recovery and Resolution Regulation), ESMA should be able to achieve efficiencies through the internal reallocation of its resources. Any additional tasks under this initiative therefore should be manageable under ESMA's current resources, also given the reduction of administrative costs for all stakeholders involved in the supervision of EU CCPs thanks to the streamlining of procedures. Some costs may however be covered by fees on EU CCPs.

8.3. REFIT (simplification and improved efficiency) and application of the 'one in, one out' approach

The initiative aims to reduce the over-reliance of EU market participants on non-EU CCPs and safeguard EU financial stability. As such, it does not aim at reducing costs per se. However, the preferred policy option related to the objective of increasing EU CCPs'

attractiveness will lead to a simplification of procedures for EU CCPs, reducing administrative burdens and making their operations more efficient, thus also bringing about a reduction of costs.

The approximate range of these cost savings has been estimated based on interactions with stakeholders and several assumptions which were needed to extrapolate the effects to the whole EU[161]. This cost saving is of an administrative nature and thus counts under the "one in, one out" approach as an "out" in the range of approx. EUR 5 million to EUR 15 million (EU total). This is likely to be concentrated in few EU CCPs (as few EU CCPs might bring new products to the market in a given year) and is likely to be beneficial in terms of their attractiveness. These reduced administrative costs related to simplified procedures for launching products and changing models and parameters as well as the ex-post approval/non-objection procedure/review for certain changes will be of a recurrent nature as CCPs benefit from leaner processes every time they ask for the introduction of new products or risk models. The estimates assume a reduction of costs related to staff, legal opinions and external consultants as a greater standardisation of documents as well as greater clarity on what needs to be submitted is introduced and less interaction with supervisors is needed. The magnitude of related cost savings will depend on the number and complexity of new products brought to the market as well as model and parameter changes asked for (for more details on the estimates, see Annex 3, Table I of this impact assessment). There are no one-off administrative cost savings as the general requirement for these procedures remains in place. As regards potential additional costs relevant for "one in, one out", there will be some administrative costs related to the reporting of active account requirements as well as very limited paperwork related to opening an account with a CCP. The reporting of active account requirements needs to be ensured continuously and the related costs will therefore be of a recurrent nature. However, the limited paperwork related to opening an account with a CCP will be a one-off cost occurring when the account is actually opened. The magnitude of these costs depends on the specification of the active account requirements in the delegated act and the frequency of reporting.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The measures aim at improving the attractiveness of EU CCPs, incentivising business to clear in the EU and enhancing the supervision of cross-border risks in the EU. As such, several changes to EMIR are considered and, in some cases, amendments to other pieces of EU legislation. The proposal should ensure that the relevant EU bodies can access the relevant information, while not giving rise to undue costs. The proposal should also include a provision that an evaluation of EMIR in its entirety should be carried out, with a focus on its effectiveness and efficiency in meeting its original aims (i.e. improving the efficiency and safety of EU clearing markets and preserving financial stability). The evaluation should consider all aspects of EMIR, but especially elements in the table below to monitor and evaluate progress to meeting the specific objectives. In principle, this evaluation should take place at least 5 years after application. The evaluation would seek to collect input from all relevant stakeholders, but particularly CCPs, clearing members and clients. Input would also be sought from ESMA as well as national authorities and central banks. Statistical data for the analysis would be sought primarily from ESMA and the ESRB.

[161] It is assumed that there will be 10 relevant procedures for all EU CCPs per year. Since there are 14 EU CCPs, this implies 1.4 procedures per CCP per year, which seems rather conservative.

Specific objective to measure	Monitoring indicators	When will monitoring start?	By whom?	Source of information
Improve attractiveness of EU CCPs	% of contracts cleared by EU clearing participants in EU and third-country CCPs	1 year after application.	ESMA with ESRB, EBA, SSM	ESMA, ESRB, EBA, SSM.
	No. of new EU CCP products approved	1 year after entry into force	ESMA	ESMA
	Time taken on average to approve new CCP products and validate model changes	1 year after entry into force	ESMA	ESMA
Incentivise clearing in the EU	Transactions cleared in EU CCPs in different currencies (absolute value and compared to global markets)	1 year after application.	ESMA with the ESRB, EBA, SSM	ESMA, ESRB, EBA, SSM.
	Volume of contracts cleared outside EU CCPs by EU actors or for EU-currency denominated contracts	1 year after application.	ESMA with the ESRB, EBA, SSM	ESMA, ESRB, EBA, SSM.
Enhance the assessment and management of cross-border risks	No. of opinions issued by ESMA per year and cases where NCAs deviate from ESMA opinions	1 year after application	ESMA	ESMA
	No. of joint supervisory teams established and tasks performed	1 year after application	ESMA, with NCAs	ESMA, NCAs
	No. of times ESMA coordinated information requests or asked information directly from CCPs in emergency situations	3 years after application	ESMA	ESMA

ANNEX 1: PROCEDURAL INFORMATION

1. Lead DG, Decide Planning/CWP references

Lead Directorate-General: Directorate-General for Financial Stability, Financial Services and Capital Markets Union.

Decide Planning Reference: PLAN/2022/6.

CWP references: N/A

2. Organisation and timing

Organisation and timing of Inter Service Steering Group's meetings: the Inter Service Steering Group included representatives of the following Directorates General: Budget (BUDG), Competition (COMP), Economic and Financial Affairs (ECFIN), Internal Market, Industry, Entrepreneurship and SMEs (GROW), Justice and Consumers (JUST), Trade (TRADE), the Legal Service (LS) and the Secretariat General (SG).

- 1st Meeting on 25 January 2022;
- 2nd meeting on 31 March 2022;
- 3rd meeting on 29 June 2022;
- Written consultation (11 July – 13 July 2022).

3. Consultation of the RSB

The Impact Assessment received a positive opinion (with comments) by the Regulatory Scrutiny Board on 14 September 2022 which made the following main recommendations for improvements:

- Explain what success would look like and how it will be effectively monitored;
- Make the range of options considered more comprehensive;
- Bring out sufficiently the rationale behind, and the envisaged design of, key measures to be dealt with through implementing regulation. Clarify on the criteria and parameters that will frame their development.

The requested clarifications were added in the relevant sections of the Impact Assessment. In particular:

- Section 5.1 was updated to clarify that the aim of the initiative would be to reduce the excessive exposures to a level where the "substantial" systemic importance, as identified by ESMA in its report, achieves a level where the framework set out in EMIR to manage risks from third-country CCPs is sufficient to preserve the EU's financial stability.
- In Section 6 and Annex 6, the options of global coordination and a permanent equivalence decision for UK CCPs were identified and discarded.
- In Section 7, and in particular in Section 7.2.2, the options were specified to further clarify how they would be implemented in Regulation and how they would be monitored by the EU institutions.

4. Evidence, sources and quality

Evidence used in the impact assessment came from a variety of sources, including:

- Replies by stakeholders to a targeted consultation which ran from 8 February 2022 to 22 March 2022to obtain feedback on the review of the central clearing framework in the EU. It was decided that the consultation should be targeted as the questions focused on a very specific and rather technical area. 71 stakeholders responded to the targeted consultation via the online form while some confidential responses were also submitted via email.
- ESMA's Report under Article 25(2)c of EMIR submitted to the Commission in December 2021[162]; the report also took into account answers to ESMA's surveys and data collection exercises from CCPs and clearing participants;
- ESRB's response to ESMA's consultation under Article 25.2c EMIR, issued in December 2021[163];
- Meeting with Member States' experts on 30 March 2022 and 16 June 2022;
- Meetings of the Financial Services Committee on 2 February and 16 March 2022;
- Meeting of the Economic and Financial Committee on 29 March 2022;
- Meeting with Members of the European Parliament on 4 May;
- Bilateral meetings with stakeholders as well as [confidential] information received from a wide range of stakeholders;
- Bank for International Settlement statistics;
- CEPS, 2021, "Setting EU CCP policy – much more than meets the eye"
- ClarusFT database

[162] ESMA report on UK CCPs, 2021 (see footnote 9 above).

[163] See ESRB response to the European Commission targeted consultation on the review of the central clearing framework in the EU, 22 March 2022, see footnote 32.

ANNEX 2: STAKEHOLDER CONSULTATION

This annex outlines the consultation strategy followed to inform key elements of the impact assessment. It provides an overview of the input received from stakeholders in preparation of this initiative (section 1). In addition, it: outlines the feedback received from stakeholders via the targeted consultation on the clearing strategy in the EU (section 2); provides an overview of ESMA's assessment report under Article 25(2c) of EMIR (section 3); includes an overview of the exchange of views with representatives of Member States, of EU bodies and authorities, during the meeting of the Derivatives and Market Infrastructures Member States Working Group, which took place on 30 March 2022 and 15 July 2021 (section 4) and finally summarises the only response received from the Call for Evidence (section 5).

1. Overview of the consultation strategy

Stakeholder consultation took different forms, including:

- A Commission targeted consultation between 8 February and 22 March 2022[164];
- A Commission Call for Evidence between 8 February and 8 March 2022[165];
- Consultations of stakeholders through the Working Group on the opportunities and challenges of transferring derivatives from the UK to the EU, in the first half of 2021 including several stakeholder outreach meetings in February, March and June 2021;
- Meeting with Members of the European Parliament on 4 May as well as bilateral meetings subsequently;
- Meeting with Member States' experts on 30 March 2022[166] and 16 June 2022[167];
- Meetings of the Financial Services Committee on 2 February and 16 March 2022;
- Meetings of the Economic and Financial Committee on 18 February and 29 March 2022;
- Bilateral meetings with stakeholders as well as [confidential] information received from a wide range of stakeholders.

The main messages of this consultative process were:

- Work starting in 2021 showed that improving the attractiveness of clearing, encouraging the development of EU infrastructures, and the supervisory arrangements in the EU will take time.
- A variety of measures was identified that could help improve the attractiveness of EU CCPs and clearing activities as well as ensure that their risks are appropriately managed and supervised.

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164 finance-consultations-2022-central-clearing-review (europa.eu)

165 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13378-Derivatives-clearing-Review-of-the-European-Market-Infrastructure-Regulation_en

166 See minutes at: https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=45435&fromExpertGroups=false

167 See minutes at: https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=45836&fromExpertGroups=false

- These measures are not only in the remit of the Commission and co-legislators, but also could potentially require contributions from the ECB, national central banks, ESAs, national supervisory authorities, CCPs and banks.
- The consultation showed that market participants generally prefer a market driven approach to regulatory measures, to minimise costs and for EU market participants to remain competitive internationally.
- Nevertheless, regulatory measures were supported to a certain extent, especially when allowing for a faster approval process for CCPs' new products and services[168].

Measures deemed useful to enhance EU CCP's attractiveness were: maintaining an active account with an EU CCP, measures to facilitate expanding services by EU CCPs, broadening the scope of clearing participants, amending hedge accounting rules and enhancing funding and liquidity management conditions for EU CCPs.

2. Targeted consultation on the review of the central clearing framework in the EU

Purpose and timing of the targeted consultation

The Commission launched a targeted consultation seeking views from stakeholders on the review of the Central Clearing Framework in the European Union. A targeted consultation was chosen as the questions focused on a very specific and rather technical area. The feedback period ran from 8 February 2022 to 22 March 2022. The consultation aimed at receiving relevant information for an impact assessment as well as to help determine how best to improve the attractiveness of EU clearing markets and the robustness of EU CCP supervision. DG FISMA services currently envisage a legislative proposal in the second half of 2022.

[168] Rather no/limited support regarding higher capital requirements in the CRR for exposures to Tier 2 non-EU CCPs, exposure reduction targets toward specific Tier 2 non- EU CCPs, an obligation to clear in the EU and macroprudential tools.

OVERVIEW OF RESPONDENTS

71 participants responded to the targeted consultation via the website. The responses are summarised in this feedback statement. Additional responses were received only by email. The latter are treated as confidential and are therefore not mentioned in the information below.

Responses were received from different stakeholders that can be grouped into wider categories mainly representing the banking industry, market infrastructure operators (e.g., CCPs, CSDs, stock exchanges), investment funds and pensions providors[169]. However, around 35% of the respondents indicated an 'other' field of activity, of which 44% were from the energy industry and 20% multilateral development banks. In total, 77% of respondents were companies or business associations. It is also worth noting, that 11 public authorities[170] from seven Member States (France, Czech Republic, Poland, Denmark, Netherlands, Spain, Sweden) replied[171]. No consumer organisation or citizen responded to the targeted consultation. Around 58% of the replies came from respondents in the EU or in the EEA and 14% from respondents outside the EU/EEA. 28% of respondents wanted to stay anonymous regarding their country of origin.

Figure 1: Participation per category of stakeholder

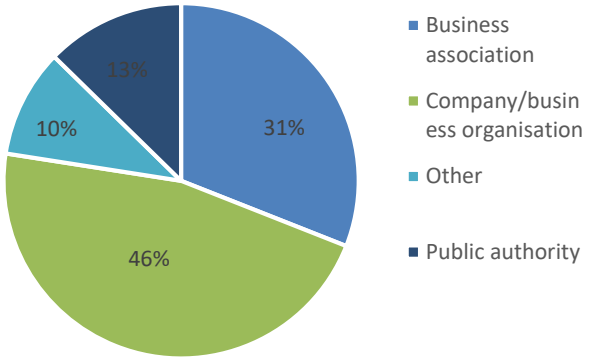
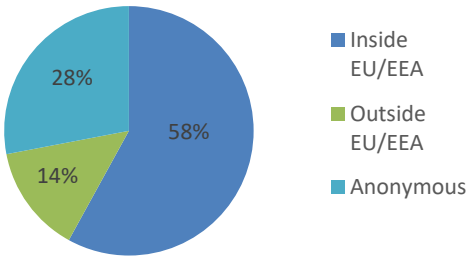


Figure 2: Country of origin of respondents



[169] Multiple answers to field of activity were possible. Therefore, no percentages are indicated.

[170] For the ease of reference, this summary refers to public authorities, also when governments and central banks provided replies.

[171] Of which two French authorities provided a joint reply as well as two Dutch authorities. For the consistency with the published excel overview of responses, they are counted as one public authority each.

SUMMARY OF KEY MESSAGES

In total 71 stakeholders replied to the consultation via the Commission website. However, the number of responses per question varied considerably. There was no question with more than 36 responses. To some questions, only very few or even no replies were received. Nevertheless, taking into account that several business associations answered expressing the views of their members, the feedback provides valuable insights. However, it should not be seen as fully representative.

This section aims to provide a summary of responses received to the targeted consultation, including statistical information. Each sub-section contains a brief synopsis of the responses received for a specific topic, while the analysis does not aim to give an overview of responses for each individual question. The percentages expressed exclude those who did not answer the questions and those who chose the option "don't know/ no opinion".

MOST EFFECTIVE MEASURES IN CONTRIBUTING TO THE OBJECTIVES

The first question of the consultation aimed to get an overview of stakeholders' views on the effectiveness of a range of possible options which could support enhancing the attractiveness of clearing at EU CCPs. Respondents considered some measures (rather) effective, notably measures to 'expand the services by EU CCPs', 'broadening the scope of clearing participants', 'maintaining an active account with an EU CCP', 'harmonising hedge accounting rules', 'improving payment and settlement arrangements for central clearing' and 'enhancing funding and liquidity management conditions'.

At the same time, respondents found other measures to be (rather) ineffective, notably 'higher capital requirements in the CRR for exposures to Tier 2 non- EU CCPs[172]', an 'exposure reduction targets toward specific Tier 2 non- EU CCPs', an 'obligation to clear in the EU' and 'macroprudential tools'.[173] The following sections provide more details on respondents' feedback.

SCOPE OF CLEARING PARTICIPANTS AND PRODUCTS CLEARED

Clearing obligation for Pension Scheme Arrangements (PSAs)

The consultation asked what measures would be needed to make clearing in the EU more attractive for Pension Scheme Arrangements. Two public authorities believed PSAs face similar challenges as other participants and expressed support for ending their clearing exemption while highlighting – as did the vast majority of respondents (82%, i.e. 28 out of 34 respondents) - that PSAs need access to liquidity in order to be able to provide margin, in particular in adverse market situations. 56% (19 out of 34 respondents) of respondents suggested that PSAs should get access to central bank-backed facilities to support their liquidity in times of stress. Views were split regarding the question whether specific regulatory initiatives or improvements to be brought about by the market itself are most suited to facilitate central clearing for PSAs.

[172] Under EMIR, non-EU CCPs are tiered depending on their systemic importance to the financial stability of the EU and its Member States. It differentiates between non-systemic CCPs (Tier 1 non- EU CCPs) and systemically important CCPs (Tier 2 non-EU CCPs).

[173] On the effectiveness of some measures, views were split, notably the 'use of post-trade risk reduction services', 'fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms for clearing services', 'segregated default funds', 'interoperability' and 'broadening the scope of products cleared'.

More clearing by private entities that do not access CCPs directly

The clearing obligation under EMIR applies to a broad range of entities, most of which access the services of CCPs through a clearing member[174]. The consultation aimed to gather a better understanding of their clearing activity and explore possible initiatives to encourage them to clear in EU CCPs. Only few stakeholders replied to the questions of this section (i.e. 13 respondents in total answered to at least one of the questions in this section). Two respondents (corporates) said that they do not clear voluntarily because of unpredictable margin calls which do not relate to their commercial (i.e., non-financial) activity. A business association representing corporates added that corporates use derivatives to manage specific risks linked to their business operations and pointed out that many products which meet the standardisation criteria to be cleared in CCPs do not meet their specific needs in terms of maturity and flexibility. Moreover, three other respondents (with their field of activity in investment management, pension provisions and market making) highlighted that voluntary clearing of certain products can accomplish pricing and margin netting advantages as well as operational efficiencies, especially if already other products are cleared. Many respondents, i.e. 11 out of 12, were in favour of further incentives to facilitate client clearing and suggested different measures, e.g. a central bank backed collateral transformation service that would allow firms to convert high quality collateral into cash for variation margin calls in adverse market situations, complementing the offer currently provided by commercial banks.

Encourage clearing by public entities

The consultation asked to what extent clearing by public entities would add to the attractiveness of central clearing in the EU. 36 respondents, including 6 from third countries provided a reply to at least one question in this section. In general, stakeholders agreed that central clearing of public entities would provide more liquidity and add to the attractiveness of central clearing. However, views on how central clearing by public entities could and should be enhanced, differed.

Member States' public authorities were generally in favour of public entities centrally clearing if it remains voluntary[175]. The same holds true for most public entities[176] that would be concerned by a potential clearing obligation. They argued that market needs should prevail and – because of public entities' special mandate and status - a clearing obligation may bring additional risks and higher costs while not providing additional value. Moreover, due to their special mandate, public entities may be unable to assume liability for default fund contributions requiring specific conditions for public entities' access to central clearing which could increase risks for financial stability.

Other stakeholders, notably banks, securities markets associations and pension scheme arrangements, expressed the view that central clearing of public entities would not only improve liquidity but also give a clear and strong signal to the market about the confidence that EU public actors have in the robustness and reliability of the EU derivatives clearing eco-system. They underlined that a successful EU onshoring of the clearing of euro-denominated derivatives implies public support and incentives. Some

[174] Among the few respondents, 8 out of 11 indicated to clear derivatives as clients of clearing members.

[175] 5 public authorities replied of which 3 mentioned explicitly that it should remain voluntary while one said that the impact would probably be limited and one argued that it would add to the attractiveness but that first the conditions would need to be assessed properly.

[176] 5 replied to the first question of the public entity section of which 4 expressed explicitly being in favour of central clearing to remain voluntary.

suggested making central clearing mandatory depending on the size and mandate of the public entity. Other highlighted also that public entities may be unable to assume liability for default fund contributions and specific conditions for their participation may be needed to be considered.

CCPs and market infrastructures also pointed to the benefits of public entities to centrally clear. Most, i.e. 5 out of 7 respondents, highlighted an increase in liquidity and some[177] argued further that it would diversify clearing, give a strong signal to the market and contribute to harmonisation and consolidation and – as a consequence - improve financial stability.

Broadening the product scope of the clearing obligation

The majority of respondents (83%, i.e. 25 out of 30 respondents) did not see the need to extend the range of products subject to the clearing obligation. Market participants expressed the view that the clearing obligation should only apply to those products that are liquid and standardised enough. CCPs however were in favour of an wider scope, mentioning e.g. foreign exchange and crypto derivatives. Moreover, the majority of respondents (83%, i.e. 15 out of 18 respondents) said that there are instances where participants would choose to trade bilaterally if products are available for clearing but not subject to the clearing obligation. Reasons included, for instance, costs, operational and legal readiness and the counterparty's ability to clear.

MEASURES TOWARDS MARKET PARTICIPANTS

Reflecting systemic importance and associated risks of Tier 2 non-EU CCPs

Stakeholders were asked how the greater systemic importance and the associated risks of Tier 2 non-EU CCPs[178] could be reflected in the context of banking rules and supervision. The majority of respondents (70%, i.e. 19 out of 27 respondents) was against imposing higher capital requirements on Tier2 CCPs. They argued that this could have negative effects on the international competitiveness of EU players due to the increased costs. Some respondents believed that, should such a measure be considered, it should only target the exposures to the services of the non-EU CCPs which were assessed as substantially systemic and/or certain activities should possibly be exempted from the calculation. Others expressed support for higher capital requirements under the condition that they would be combined with other measures such as active account requirements and development of offer. The majority of respondents (80%, i.e. 16 out of 20 respondents) sees a risk of participants relocating clearing to other non-EU jurisdictions if a higher capital requirement on excessive exposures to T2 CCPs is imposed.

Macroprudential tools

Most respondents (79%, i.e. 15 out of 19 respondents) expressed a negative opinion regarding the idea to introduce macroprudential tools to address the over-reliance on Tier 2 CCPs. Moreover, all respondents (i.e. 14) were against macroprudential buffers. As for potential higher capital requirements, respondents highlighted the potential negative consequences for EU players' international competitiveness due to increased costs.

[177] 2 highlighted diversification and 2 harmonisation as a benefit.
[178] Footnote 172 provides an explanation of Tier 1 and Tier 2 non-EU CCPs.

Setting exposure reduction targets

Views were mixed regarding the question whether exposure reduction targets should be set in order to reduce excessive reliance on Tier 2 CCPs. Also, views on how such targets could be set differed, including on the timeline, calculation and appliance level. Suggestions included a phasing-in of targets, applying targets only to systemic services as well as setting the target at clearing member level and/or potentially client level.

Level playing field, obligation to clear in the EU and facilitate transfer of contracts from outside the EU

Overall, when it comes to a possible obligation to clear specific trades in the EU, facilitating the transfer of contracts from outside the EU and level playing field issues, respondents were against mandatory regulatory measures and in favour of voluntary market-driven solutions which take into account client demand: The vast majority of respondents (92%, i.e. 23 out of 25 respondents) was against an amendment of Article 5 of EMIR resulting in a clearing obligation for new contracts which could only be fulfilled through authorised EU CCPs and/or recognised Tier 1 CCPs. All respondents (i.e. 12) were against a mandatory clearing obligation in EU CCPs for legacy trades and most (80%, i.e. 8 out of 10 respondents) also against a mandatory compression exercise on legacy trades. Moreover, the majority of stakeholders (93%, i.e. 14 out of 15 respondents) was in favour of a permanent exemption for a novation of legacy trades without triggering any EMIR requirements. Reasons for all the above mentioned were – as for macroprudential tools - negative consequences on competitiveness due to increased costs.

Active account

Only a few respondents (15%, i.e. 3 out of 20 respondents) expressed the view that active accounts were not a reasonable measure. Views differed however considerably on how an active account should be defined. Some stakeholders (including market participants and a public authority) noted that an active account should only be a back-up solution for occasional use in order to test the account's smooth functioning. Other stakeholders (including 2 EU CCPs, market participants and 2 public authorities) suggested that an active account should have requirements regarding the level of its use. Suggestions varied considerably regarding the nature of these requirements, ranging from a discretionary 'reasonable' frequency of use to fixed thresholds as well as having mandatory clearing in active accounts at EU CCPs for certain products.

Hedge accounting

All respondents answering (i.e. 10) were in favour of a harmonisation of the hedge accounting rules across Member States in order to facilitate a reduction of exposures to Tier 2 non-EU CCPs. Two respondents pointed out that accounting should reflect the purpose of the transactions carried out, as well as some more formal aspects, but not unduly hinder transactions. At the same time, two other respondents stated that a harmonisation would be a helpful but not a substantial contribution to enhance clearing in EU CCPs. Another two respondents highlighted that in any case accounting arbitrage should be avoided and a harmonisation could benefit the Capital Markets Union.

Transactions resulting from post-trade risk reduction

Views differed regarding the effects of post-trade-risk-reduction[179]. While banks and trade associations thought that multilateral compression is effective in reducing risks (also in the uncleared space), financial market infrastructures highlighted that post-trade-risk-reduction at CCPs already takes place and may well reduce certain risks. However, they stressed that it is important to note that compression does not reduce the risk exposure but only results in a reduction of the notional exposure held. Moreover, several respondents pointed to the importance of network effects as post-trade-risk-reduction measures are more effective in large CCPs.

Fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms for clearing services

The majority of respondents (87%[180], i.e. 13 out of 15 respondents) were against further regulation of the provision of client clearing services, which offer clients consistently the option to clear at least at one EU CCP or be incentivised to do so. They argued that public intervention and more obligations and constraints on entities offering clearing services may make it less attractive from a cost point of view to offer clearing services to clients with limited trading activity and therefore unintentionally limit access to clearing for end clients.

MEASURES TOWARDS CCPs

Measures to expand the offer by EU CCPs

The vast majority of stakeholders (90%, i.e. 20 out of 22 respondents) was positive as to the idea of improving the ability of EU CCPs to be competitive by expanding their offer and speeding up the approval process for new products. Respondents (mainly CCPs, but also two business associations, a central bank and a national supervisory authority of a Member State) highlighted that in particular the long EMIR approval process to launch new products had negative consequences on EU CCPs' competitiveness. They considered the existing governance as well as the requested documentation too complex and pointed to a lack of clear timelines. Three public authorities agreed that there is room for a faster approval process for certain initiatives. Other respondents, notably banks, agreed that it is crucial that EU CCPs are able to increase their offer to make it comparable to the offer of non-EU CCPs.

Payment/settlement arrangements for central clearing

The majority of respondents (75%, mainly banks and CCPs but also a public authority) stated that it would be beneficial to extend the operating hours for payment arrangements available in the EU (Target2[181]). They argued that it would ease the process of margin calls and payments in EUR, reducing dependence on USD liquidity. Currently, EU CCPs are not able to process EUR payments at a late hour (because of Target2 closing times) and need to switch to USD to meet margin calls. According to respondents, EU CCPs therefore depend on the repo market and the capacity of the CCPs' counterparties to absorb such liquidity in exchange for high-quality collateral.

[179] 16 respondents expressed a view.

[180] Contrary to this specific section, views regarding FRANDT were split in the introductory question. This is due to the fact that fewer respondents replied to the specific FRANDT section than to the introductory question and those responding were rather the ones that considered it an inefficient measure.

[181] TARGET2 is the real-time gross settlement system owned and operated by the Eurosystem.

Segregated default funds

Under EMIR, CCPs can have a single or multiple default funds. Some market participants argued that multiple default funds are an attractive feature, as they can contribute to avoiding contagion and thus reduce financial stability risks. However, the majority of stakeholders (82%, i.e. 14 out of 17 respondents) did not believe that segregation should be imposed by law as they do not deem the segregation model superior per se while it could imply more clearing costs. Respondents (a supervisory authority and a CCP) expressed the view that legislation should not favour one model over the other since both types of models are subject to supervisory approval and have advantages in different scenarios, depending on the client structure and products cleared. Respondents in favour of mandatory segregation (a bank and a market infrastructure group) believed that the segregated model was good for risk management purposes and reducing contagion risk.

Interoperability

Regarding interoperability, views were generally mixed. Around half of the respondents (8 out of 14 respondents) indicated that EMIR should cover interoperability arrangements for derivatives, while the remaining respondents had the opposite view. Respondents (including public authorities, CCPs, clearing members) mentioned as advantages that interoperability arrangements promote liquidity, reduce fragmentation and lower costs of clearing. However, other respondents (also including public authorities, CCPs, clearing members) pointed out that they also pose risks which have to be taken into account and thought that interoperability arrangements could in general lead to higher clearing costs.

MONITORING PROGRESS TOWARDS REDUCED RELIANCE OF EU PARTICIPANTS ON TIER 2 CCPS

Views were mixed regarding the question as to which EU market participants should be primarily targeted in a central data collection exercise to ensure a complete risk picture of exposures to Tier 2 CCPs. Some respondents said that EU clearing members and specific clients should be targeted, others expressed the view that only EU clearing members should be part of the data collection and yet others had again different suggestions such as including all counterparties subject to the clearing obligation. Even though views were split about the level at which a data analysis should take place, most respondents (market participants, a CCP and a public authority) agreed that data which are already reported under EMIR should be used for the monitoring process. They pointed out that ESMA has all necessary information available and could analyse them for clearing members and clients, as well as for any type of product. Moreover, some stakeholders argued that a data collection should focus on systemic risk aspects and therefore only cover certain derivative asset classes.

SUPERVISION OF CCPS

Regarding the benefits of a stronger EU supervision, few responses (i.e. 9) were received and views were split. According to stakeholders (including a public authority and a non-EU CCP), benefits of a stronger EU supervision could be uniformity of supervisory practices and outcomes. Respondents were in favour of a faster approval process for launching new products (see also section 3.4.1 ‘Measures to expand the offer by EU CCPs’). Those against a stronger EU supervision (two public authorities, an EU CCP, a central bank) argued that it would not reduce costs, as costs were a result of the EMIR regulatory requirements and therefore unrelated to the level at which supervision is exercised. In addition, it was mentioned that ESMA may not be best placed to deal with

interpretation of national law. Overall, CCPs were of the view that regulatory compliance costs were high and procedures time consuming due to the current structure of the authorisation process, including duplicative sequencing of authorisations by the national competent authority and ESMA and the engagement of the relevant EMIR College.

EMIR AND OTHER REGULATIONS/DIRECTIVES

Respondents provided detailed views on the interaction with other regulations/directives (MiFID, CRR, CRD, UCITS, AIFMD2, MMFR, Solvency), however on different aspects, not allowing for an extrapolation or generalisation. Examples of suggestions are the following: an industry association representing European CCPs, and an EU CCP, suggested amending the Solvency II regulatory framework, explicitly adopting beneficial risk weight for CCP cleared transactions cleared directly with CCPs similar to the CRR. The same stakeholders suggested amending Article 52 of the UCITS Directive to exclude CCP cleared transactions from counterparty exposure and diversification requirements, reflecting the risk reducing nature and systemic importance of CCPs. An industry association representing the funds industry of a Member State and an industry association representing the asset management and investment fund industry in another Member State called for an amendment of the ESMA Guidelines on ETFs and other UCITS issues so that UCITS can use the cash obtained via a repo transaction for the collateralisation of CCP clearing eligible OTC derivatives. An association representing a banking industry from a Member State was in favour of stronger protection for client clearing arrangements through the Settlement Finality Directive and the Financial Collateral Directive.

OTHER ISSUES

The consultation asked for possible other matters that could potentially contribute to enhancing the attractiveness and efficiency of EU CCPs and clearing services.

Blockchain and distributed ledger technology

The consultation enquired whether blockchain and DLT could be used in the field of clearing to improve the attractiveness and efficiency of EU CCPs and clearing markets. In total 13 stakeholders provided a reply, of which 11 saw benefits. However, they did not express the need to amend EMIR with regard to blockchain or DLT, but highlighted instead the potential benefits (e.g. its use for the reconciliation process or reporting of data) as well as limitations of its use for CCPs (e.g. not suited for multilateral netting or the default risk management).

Other issues

An issue raised by several stakeholders referred to the framework for non-EU CCPs. While a national authority criticised the fact that the consultation did not include any questions in this regard, a non-EU CCP stressed the importance of continued access of non-EU CCPs to the EU market based on a transparent, predictable, proportionate and risk-based approach. An industry association representing the banking industry from a Member State suggested requiring non-EU CCPs to accept EUR as a means to pay margin calls in order to reduce the risk that EU clearing members face regarding exposures to non-EU CCPs. Other issues raised were e.g. ‘access to liquidity’ (two CCPs highlighted the need of increasing CCPs’ access to central bank liquidity facilities in different EU currencies) and ‘non-cash collateral’ (an industry association representing European CCPs suggested that authorities consider the possibility of using non-cash

collateral such as non-fully backed bank guarantees as collateral to benefit non-financial users in particular).

3. An overview of ESMA's assessment report under Article 25(2c) of EMIR

During 2021, in accordance with Article 24a(10) of EMIR, ESMA undertook a comprehensive review of the systemic importance of UK CCPs. The results of this review were published in the 2021 ESMA report on UK CCPs on16 December 2021[182].

As part of this analysis, ESMA reached out to a wide range of stakeholders, including public authorities and market participants for input into its assessment to ensure a comprehensive review. In particular, ESMA: a) asked LCH Ltd and ICEU to provide data and information for the assessment of their systemic importance under the methodology; b) invited relevant market participants, including a representative sample of EU clearing members, clients and trading venues accessing LCH Ltd and ICEU, as well as EU CCPs, to respond to tailored data requests; c) engaged with relevant public authorities, including the ESRB, the relevant central banks of issue, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the Single Supervisory Mechanism (SSM), the Single Resolution Board (SRB), and the Bank of England (BoE). In some cases, tailored data requests were also sent. The reference period was June 2020 to June 2021.

On 15 July 2021, ESMA organised two roundtables with representatives of EU clearing members and clients of EU clearing members to provide ESMA with the user perspective on a) the systemic risk posed by Tier 2 CCPs and b) the costs, benefits, and consequences of a potential decision not to recognise the CCP to provide certain clearing services. In addition, ESMA notes that engagement with the stakeholders continued throughout the assessment process through an open dialogue with the Chair and the Independent Members of the CCP SC, and ESMA staff. Finally, ESMA notes in its report that the CCP Supervisory Committee and ESMA Board of Supervisors were involved throughout the assessment process through presentations, general information sharing, and discussions at regular and dedicated meetings.

The ESMA Report notes that whilst the analysis suggests that LCH SwapClear and ICEU services on CDS and STIR could be candidates services of substantial systemic importance for the Union, also an assessment that the compliance with the conditions for the recognition of Tier 2 CCPs would not sufficiently address financial stability risks to the Union or one or more of its Member States should be undertaken.

ESMA notes that whilst the conditions for the recognition of Tier 2 CCPs aim to ensure that such CCPs comply with the requirements under EMIR on an ongoing basis so that, in principle, the risks stemming from services provided by a Tier 2 CCP would be the same if such services were instead to be provided by a CCP established in the Union there might be scenarios where the formal compliance by a CCP with EMIR requirements, located in or outside of the Union, is by itself insufficient to fully mitigate the risks that certain services may pose to the financial stability of the Union or of one or more of its Member States. The situations identified by ESMA includes cases where CCPs may adopt discretionary decisions, under business-as-usual or crisis situations, on whether, when and how to adopt certain risk management measures which may have broader systemic implications. Moreover, EMIR requirements to be met by CCPs do not address financial stability risks resulting from recovery and resolution scenarios.

[182] See 2021 ESMA report on UK CCPs (see footnote 9 above).

This scenario analysis highlights in the ESMA report how LCH SwapClear could create additional risks to EU financial stability in business as usual, crisis management, and recovery and resolution circumstances, due to its location outside the EU.

On the scenarios ESMA had established 3 business as usual scenarios that were considered in detail. The first scenario concerns LCH Ltd and ICEU limiting access of EU trading venues to its clearing services as both LCH Ltd or ICEU have discretionary powers for restricting, suspending, or terminating access to EU. In this respect, ESMA notes that, Tier 2 CCPs currently do not have to comply with EMIR provisions on open access for trading venues for OTC derivatives under Article 7 and 8 of EMIR. The second business as usual scenario concerns a decision by LCH Ltd or ICEU to terminate membership of EU clearing members as the CCP has discretionary powers for restricting, suspending, or terminating access to EU clearing members altogether. The final business as usual scenario concerns operational disruptions at LCH Ltd or ICEU stemming from diverse root causes including in the LCH Ltd assessment operational disruptions that may temporarily prevent EU trading venues and clearing members from clearing interest rate derivatives subject to the clearing obligation and other interest rate derivatives and where financial stability could be affected if the service were not recovered promptly.

ESMA notes that a CCP has discretionary powers under stressed market conditions to take actions that may impact the financial stability of the Union or of one or more of its Member States and that such actions could conflict with the coordinated actions of EU authorities and institutions to address the market stress and minimise any second-round effects. ESMA has identified several scenarios under crisis management (i.e., assuming market volatility), where Tier 2 CCPs therefore could pose a systemic risk to the Union or one or more of its Member States. Discretionary powers include: i) an increase in margin requirements on EU currency IRDs; ii) increases in haircuts on EU collateral (e.g., government bonds; iii) requests for additional margins from EU clearing members, based on internal rating models; and iv) declarations of default of an EU clearing member, irrespective of recovery and resolution measures.

Whilst ESMA notes that under direct supervision, ESMA shall review (and, where needed, seek changes to) the margin and haircut policies and procedures as well as the internal rating models, to ensure that adjustments are implemented when due in an objective and non-discriminatory manner, in compliance with EMIR (including requirements on anti-procyclicality), ESMA has no ex-ante intervention powers vis-a-vis the CCP to prevent the adoption of measures that are detrimental to the EU financial stability and further notes that ESMA has no ex-ante powers to oppose a supervisory intervention or action by the UK authorities relating to the discretionary risk management measures considered above, when that would negatively affect EU financial stability.

Finally, ESMA has assessed the scenario of recovery and resolution of LCH Ltd and ICEU, where several scenarios may potentially impact EU financial stability. ESMA notes that the impact of a recovery event may be disruptive for clearing members per se and that the recovery rule book is a contractual arrangement that can be adjusted at any time and ESMA has no supervisory mandate over the LCH Ltd or ICEU recovery plans and that the recovery plans may evolve to comply with new requirements in the UK. ESMA further notes that whilst ESMA and other relevant EU or national authorities participate in the global college and in crisis management group (CMG) for LCH Ltd and ICEU, neither the college nor the CMG adopt decisions or opinions on the recovery or resolution plan, respectively and BoE is independent in reviewing the CCP recovery plan and defining its resolution strategy and resolution plan. In doing so, it mainly pursues the financial stability of the UK according to its mandate.

Furthermore, a failure of or a disruption to CCP could impact the functioning of money markets which may negatively impact financial stability and monetary policy implementation where negative implications have been identified for PLN and EUR for LCH Ltd Swap Clear.

ESMA concludes that both LCH Ltd and ICEU fulfil a critical function to EU financial markets, and the broader financial system and this creates dependencies of the EU on LCH Ltd and ICEU, which vary per segment hence based on the characteristics of the clearing service provided. The analysis of scenarios that may impact EU financial stability, concludes that even where SwapClear and ICEU are in full compliance with EMIR requirements, certain services of SwapClear and ICEU are of substantial systemic importance for the financial stability of the EU as a whole.

The assessment concludes that the SwapClear service is of substantial systemic importance for the financial stability of the EU as a whole in relation to certain EU currencies, i.e., for EUR and PLN. Although alternatives to LCH Ltd are available (Eurex Clearing, CME Clear), these are currently expected to be able to take over LCH Ltd's role only to a limited extent and bilateral clearing will also not be possible for products subject to a clearing obligation - and would not be a desirable outcome.

The assessment further concludes, based on the characteristics of ICEU's CDS segment and a scenario analysis, that the CDS segment is of substantial systemic importance for the financial stability of the EU. The CDS segment has a significant market share in euro denominated CDS, which includes CDS products subject to the clearing obligation. Strong dependencies exist with the largest EU active clearing members and liquidity exposures are also high. Even though the potential losses are sufficiently covered by capital in isolated events, EU clearing members would be subject to substantial pressures in the case of market-wide crises. Alternatives exist (notably US based ICC and France based LCH SA), but market depth is limited, and migration would be costly.

Finally the assessment notes that for ICEU's F&O segment, the euro-denominated listed STIR derivatives are also considered to be of substantial systemic importance for the financial stability of the EU. These concern important instruments for monetary policy for the euro area, including the Euribor futures, and as such are at the nexus of the EU financial system. Whilst buffer capacity appears to be sufficient, it cannot be safely assumed that the buffers will be available during a crisis scenario. ICEU is basically a monopolist in the short-term products. Eurex Clearing, LCH Ltd, and CME also offer interest rate derivatives, but not with the same maturities and underlying values. Finally, ICEU is the only CCP to have access to the trading venue of reference for the STIR products, which is ICE Futures Europe.

The ESMA report also presents a technical assessment of the costs, benefits, and consequences of a decision not to recognise the CCP to provide certain clearing services or activities and finally ESMA presents its own conclusions by combining the outcome of the first part, whereby ESMA has concluded that certain of the services provided by LCH Ltd and ICEU that are to be considered substantially systemically important and the part where ESMA is requested to presents the costs, benefits, and consequences of a decision not to recognise the CCP.

4. Meetings of the Derivatives and Market Infrastructures Member States Working Group

The Commission conducted several meetings with Member States, stakeholders, and MEPs. In particular, in March 2022, the Commission held a Member States' Expert Group meeting. The European Parliament Economic and Monetary Affairs Committee

secretariat, the ECB and ESMA were also invited. A subsequent meeting was held in June 2022 to consider a wide range of policy options and their potential impacts. A summary of the discussions is available online for both meetings[183]. In addition, a meeting was held on 4 May 2022 with MEPs to present the preliminary findings from the targeted consultation and the next steps. The meeting summaries are the following:

4.1. Meeting of Member States' Experts on 30 March 2022

On 30 March 2022, a working group of Member States' experts met by means of a virtual conference to discuss ways to enhance clearing capacity in the EU and reduce the over-reliance on Tier 2 third-country central counterparties (CCPs) in the context of the clearing strategy announced by Commissioner McGuinness on 10 November 2021 and the public consultation ran by the Commission from 8 February 2022 until 22 March 2022.

The meeting allowed Commission services to gather the views of Member States, the ECB, the ESRB, the SSM, the EBA, the EIOPA and ESMA. The aim was to inform the Commission's work developing its strategy on clearing following the statement of Commissioner McGuinness on 10 November 2021 which is planned for later in 2022, to build domestic capacity through measures to make the EU more attractive as a competitive and cost-efficient clearing hub, and thus incentivise an expansion of central clearing activities in the EU, and strengthen supervision, including a stronger role for EU-level supervision. The feedback received during the meeting with Member States' experts is summarised below.

4.1.1. Broadening the scope of the clearing obligation

Commission services consulted on whether this could be achieved by **broadening the range of entities which would fall under a clearing obligation** in 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 (EMIR), and/or by **broadening the range of products** to be centrally cleared.

Very few Member States intervened on these aspects. Member States generally agree on broadening the scope of clearing to Pension Schemes Arrangements at the latest in 2023, although one Member State said that solutions should still be found for the provision of margins. Two Member States supported broadening the scope to public entities, two opposed. Several Member State favoured a market driven approach.

Two Member States said that there was no need to change the methodology for determining which products should be subject to the clearing obligation. One said the product scope could be broadened.

4.1.2. Increasing clearing in the EU and reducing reliance on Tier 2 third-country CCPs

Commission services consulted on a number of measures that could be considered, including in this regard:

[183] See the minutes of the meeting with Member States on 30 March 2022: https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=45435&fromExpertGroups=false
and the following link for the minutes of the meeting with Member States on 16 June 2022: https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=45836&fromExpertGroups=false)

- **higher capital requirements** under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR) on banks' exposures to Tier 2 third-country CCPs, reflecting the risks of such CCPs and thus aligning the CRR with the framework for third-country CCPs of EMIR. Macroprudential tools could also be considered;
- exposure **reduction targets** to be met gradually by clearing participants;
- EU market participants could be required to open and keep an **active account** at an EU CCP for clearing a portion of their transactions;
- a straightforward **obligation to clear in EU CCPs** or in less systemic (Tier 1) CCPs.

Member States generally supported the overall objective of the Commission to reduce exposures to Tier 2 third-country CCPs, but three also asked for more analysis on stability risk. Several Member States also expressed their concerns about potentially negative impacts on the EU financial sector as well as their clients in terms of costs and competitiveness, which could result in EU firms using non-EU banks to clear abroad. In this context, 7 Member States intervening opposed negative incentives such as higher capital charges towards Tier 2 CCPs or an obligation to clear in the EU.

At the same time, two Member States, and two EU authorities, indicated broad support for looking into imposing the maintenance of an active account in an EU CCP. Some Member States emphasised the need to have a proportionate approach to the active account in order to avoid penalising smaller market participants. 2 Member States supported exploring higher capital charges or activity targets linked to capital penalties. One member state opposed the option of active accounts.

4.1.3. Expanding the offer by EU CCPs

Member States were invited to consider how to facilitate, where appropriate, the offering of **new products/currencies by EU CCPs**, as the argument was raised that they are currently hindered in this compared to their peers in other jurisdictions.

There was broad agreement amongst Member States that EU CCPs should expand their offer, however few concrete views were provided on how to achieve this objective.

4.1.4. Enhancing the attractiveness of the EU clearing landscape and the competitiveness of EU CCPs

Member States were asked to reflect on whether **interoperability** or **cross-margining arrangements** could be useful in the context of the stated objectives, whether **segregation of default funds** could be an asset in terms of attractiveness, or exploring any **improvements in the funding and liquidity management arrangements for CCPs** and in the payment and settlement area.

One Member State suggested looking into a fast track procedure to introduce new products. Another Member State said that interoperability, cross-margining or segregated default fund requirements should be looked at with care as they are not without risks to financial stability.

More widely, Member States and one EU authority supported the idea that further consideration should be given by central banks to enabling EU CCPs to access to central bank facilities.

4.1.5. Reviewing the supervisory architecture for EU CCPs

Member States were asked to reflect on the need for changes in the EU supervisory framework. Remarks were general but focused on two main issues.

First, in general terms, several Member States that took the floor expressed the view that the current supervisory framework allows for taking into account cross-border risks. Some of them also stressed that the current framework takes into account the fiscal responsibility of the Member State where the CCP is established in the unlikely event of a CCP default. Two Member States were not in favour of opening supervision in an EMIR review for this reason. Six Member States where sceptical to centralised supervision. Other participants recalled however that a possible default of a CCP would affect also those of its clearing members that are located in other Member States. If changes were anyhow considered necessary because of increased clearing activity in the EU, one Member States expressed the opinion to support looking into whether 'tiering' of EU CCPs could be an option, based e.g. on financial stability risks.

Second, several Member States pointed out that Regulation (EU) No 2019/2099[184] ('EMIR 2.2') introduced a new supervisory architecture, including the CCP Supervisory Committee at the European Securities and Markets Authority (ESMA), which aimed at increasing EU convergence and coordination and gave ESMA supervisory power over Tier2 CCPs in third countries. Those Member States stated that those changes seem to work well, and that sufficient experience should be gained before considering changes to the supervisory framework. At the same time, there was general agreement among those that intervened that there would be room for amendments to EMIR to improve procedures; reducing red tape and aligning procedures in different areas could make EU supervision simpler, faster and more flexible and therefore contribute to improving the competitiveness of EU CCPs.

4.2. Meeting of Member States' Experts on 16 June 2022

On 16 June 2022, a working group of Member States' experts met virtually to discuss possible measures to facilitate clearing at EU CCPs. The meeting also explored the supervisory framework as well as other issues. The meeting built on the Commission targeted public consultation on the review of the central clearing framework in the EU from 8 February to 22 March 2022, to which more than 70 responses were received, and on the previous meeting of the Derivatives and Markets Infrastructures Working Group on 30 March 2022.

The meeting allowed Commission services to gather the views of Member States, the ECB, EBA and ESMA. DG FISMA services currently envisage a legislative proposal in the second half of 2022. The feedback received during the meeting with Member States' experts is summarised below.

4.2.1. Demand-side Measures

4.2.1.1. Active accounts

Several stakeholders responding to the targeted consultation showed openness to the idea of requiring EU clearing participants to hold an active account with an EU CCP, i.e. an account through which (at least) a portion of transactions would need to be cleared. An active account should ensure that there is regular clearing activity at EU CCPs. It should differ from accounts which already exist in some cases but are "dormant", i.e. not

[184] Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ L 322, 12.12.2019, p. 1),

actively or regularly used by clearing participants. This could help enhance liquidity at EU CCPs, an aspect market participants consider key in their choice where to clear.

Member States who expressed an opinion emphasised that competitiveness of the EU should be ensured and were either supportive of an active account requirement or open to look further into it, subject to certain conditions. In general, Member States highlighted that the details were important and proportionality should be respected.

Three Member States and one EU authority supported an active account requirement. Two of them and the EU authority said that such a requirement should focus on systemic clearing services, especially on services denominated in euro. Those Member States argued that an initial target should be set at the active account and re-evaluated and potentially be increased at a later stage. One of those Member States said that no volume requirements should be set at the beginning. Instead, qualitative measures should be used with quantitative measures following in a second stage. Another Member State expressed the view that quantitative thresholds should start with a rather low threshold and be re-calibrating further based on a detailed assessment of previous experiences. The same Member State suggested that not only clearing members but also a wider range of stakeholders should meet active account requirements. To take into account client clearing and its impact on proportionality aspects, clients with low exposures to third-country CCPs could be exempted from an active account requirement. A Member State suggested further to consider sanctions as an option where levels are not met and highlighted that it should not be supervisory authorities to set the threshold requirements.

Five Member States indicated that they were open at the current stage. However, they argued that an active account requirement may mainly affect smaller parties and be burdensome. Therefore, these Member State indicated that first, costs related to an active account requirement would need to be considered and assessed before they could express an opinion. However, one EU authority explained that data cannot be shared easily due to data protection reasons.

Two Member States expressed concerns that complexity may increase without much effect if only a qualitative requirement was introduced. One of these Member States highlighted the importance of appropriate supervision. One Member States explained that smaller market participants may be forced out of the EU by an active account requirement potentially leaving only big players in the market and causing concentration issues. The Member State explained that market making and clients of clearing members would need exceptions.

One EU authority supported the introduction of active accounts and highlighted that active accounts as a backup plan would be insufficient to address elevated exposure levels to third-country CCPs and not lead to a risk reduction.

4.2.1.2. Large exposures framework for exposures to systemic qualifying CCPs

Another possibility to reduce the current over-reliance on systemic third-country CCPs would be to set a specific limit to the exposure banks and investment firms can have to a systemic qualifying CCP (QCCP)[185]. A specific concentration limit could be conceived under the "large exposures" regime of the Capital Requirements Regulation, which

[185] Qualifying CCPS ('QCCPs') are CCPs authorised in the EU or recognised by ESMA; they benefit from a preferential capital treatment under the CRR.

currently does not restrict exposures to QCCPs[186]. The systemic nature of certain QCCPs could justify the introduction of such limit for financial stability reasons. To indirectly reduce the volumes of EU-denominated transactions to "systemic" non-EU QCCPs, this approach should be seen as complementary to the active account option.

Five Member States and one EU authority were not in favour of a large exposure framework. One Member State and the EU authority argued that it might be difficult to calibrate an appropriate exposure level and highlighted that national supervisors are already allowed to impose additional requirements under the current SREP tool. The EU authority argued further that risks related to over-reliance on a systemic third-country CCP may be manageable on a clearing member level but not on a macro level. Therefore, the risk should be addressed at a macro rather than at clearing member level. Two Member States saw disadvantages for EU clearing members compared to banks in other jurisdictions. Another Member State considered a large exposure framework too rigid. One Member State was in favour of a large exposure framework which should target large users while not making it complicated for smaller ones.

4.2.1.3. Clearing by public entities

Several stakeholders consider that public entities, which are not currently required to clear at a CCP under EMIR[187], should be subject to a clearing obligation and should clear at EU CCPs. The rationale is that public entities' clearing would help increase liquidity at EU CCPs and could be a signal of confidence in EU CCPs. Some public entities already clear some transactions centrally.

Four Member States expressed the view that clearing for public entities should stay voluntary. Three Member States favoured a recommendation for public entities that clear voluntarily to do so at an EU CCP. One EU authority supported this option too, but elaborated further that in their view only EU currency business should be captured. Another Member State showed openness to this as well. Another Member State was in favour of certain public entities being covered by the clearing obligation under EMIR.

One Member State stated that collateral is the most important issue to consider in this context, pointing out that public entities posting their own collateral would lead to wrong way risk. Public entities not posting collateral at all would create an imbalance between clearing members and in both cases other clearing members would have to cover sovereign risks. Furthermore, it might force certain countries to buy assets from other countries for collateralisation purposes. Two other Member States supported this view.

4.2.1.4. Facilitate clearing by clients

Respondents to the public consultation were generally in favour of measures facilitating clearing by clients. In particular, measures proposed could concern insurance companies as well as money market and investment funds, which are subject to the clearing obligation under EMIR. The relevant sectorial legislation do not fully take into account

[186] The large exposures framework aims to limit the overall exposure that a bank has with a single client or a group of connected clients, therefore limiting the potential loss if that client or group of connected clients do not meet their financial commitments. This framework requires banks to measure their exposures to a single client or a group of connected clients and limit the size of these exposures to a fixed pre-defined percentage of their available Tier 1 capital (i.e. 25%).

[187] Some public entities (e.g. multilateral development banks, the ESM) are subject to the reporting obligation under EMIR, others (e.g. the Eurosystem and debt management offices) are exempt from EMIR.

the benefits of central clearing in terms of risk reduction, as the banking framework, for example, does[188].

One Member State supported both options, for insurance companies as well as for UCITS[189]. One EU authority expressed – in line with its opinion from 2015 - support for revising the exposure limits for OTC derivatives that are cleared centrally for UCITS. Two Member States were open to exploring both options further.

4.2.1.5. Hedge accounting

Another possible measure which received broad support from stakeholders in the consultation concerns hedge accounting rules. According to some stakeholders, there is uncertainty around the application of certain hedge accounting rules (especially national ones, and to a lesser extent IFRS), so that a transfer of positions from a third-country CCP to an EU one could in practice be discouraged. Stakeholders indicated that in case of a switch of positions from a CCP to another one and the novation of derivative contracts used for hedging, there would be uncertainty as to whether or not the related "hedging relationship" should be considered terminated, impacting the profit and loss account[190].

A few Member States took the floor but had no strong views on this matter. One Member State said that it is working on addressing legal issues related to the topic outlined. Another Member State indicated to further look into the issue and expressed the view that a more in-depth assessment would be needed. Two Member States argued there would be no harm in exploring this issue, while another did not express a view on any of the options outlined as they considered them to be interpretative problems.

4.2.2. Supply side Measures

4.2.2.1. Simplification of long, burdensome and complex EMIR procedures

According to the feedback received EU CCPs face complex, lengthy and burdensome procedures in their interaction with their supervisors and the other relevant authorities and bodies as part of the current EMIR framework. They seem to be of particular concern when an EU CCP wishes to extend the activities and services it offers (Article 15, EMIR) or to bring significant changes to its models and model parameters (Article 49, EMIR). The complexity and length of such procedures affect the ability of EU CCPs to compete.

Member States agreed that procedures under Article 15 and 49 EMIR should be more efficient and the processes improved. Most representatives who expressed their view favoured exploring the setting up of a single point of contact where all CCP submissions could take place via a single digital platform and be immediately shared with the national competent authority (NCA), ESMA and the other authorities involved in that CCP's supervision (e.g. college members). This would ensure work can be conducted in parallel, possibly shortening the process considerably. Another option that most Member States who expressed an opinion considered worth exploring further was to standardise more the documentation to be submitted by EU CCPs.

Three Member States suggested to further look into ex-post approval/review as done in some other jurisdictions which allow CCPs to launch new products in asset classes

[188] Under the CRR, banks and investment firms' exposures to qualifying CCPs benefit from a preferential capital treatment (a risk weight of only 2% applies to trade exposures of clearing members to such CCPs; also banks clearing as clients can enjoy a preferential capital treatments under certain conditions).

[189] Undertakings for collective investment in transferable securities (UCITS).

[190] Through the release of other-comprehensive-income cash-flow hedge accounting reserves.

already cleared under an ex-post approval/review process as well as a self-certification process for some rules changes. However, Member States experts pointed to the need to carefully frame such approaches. One Member State particularly highlighted that this option should only be available if non systemic risks are concerned.

4.2.2.2. Central bank related measures

Respondents to the consultation broadly support potential enhancement of the central clearing framework which are in the remit of central banks. In the consultation, market participants argue that giving EU CCPs the same level of access to central bank facilities irrespective of them having a banking license would make EU CCPs safer by limiting their dependency on commercial banks, allowing them to better manage risks. Two concrete measures were suggested: allowing CCPs to accept payments in central bank money in all EU currencies ideally without interruption (24-hour service) or over an extended time range and granting access to central bank deposit and liquidity facilities (emergency or routine) for all EU CCPs regardless of whether they have a banking license in a harmonised manner.

Only few Member States and one EU authority expressed a view. Views were split. While around half said that these issues should be discussed in the monetary framework rather than under EMIR, the other half welcomed the suggestions and encouraged the ECB and ESCB to further engage in dialogue with CCPs to discuss potential improvements.

4.2.2.3. Other issues

Regarding other issues, a potential requirement for segregated default funds for different asset classes, potential changes to the investment policy as well as eligible collateral were discussed. Only a few opinions were provided, expressing concerns rather than support.

Regarding eligible collateral, two Member State expressed concerns regarding emission allowances being considered highly liquid. Another argued that a review of eligible collateral might be worth considering for commodity derivatives and in particular energy derivatives. One Member State stated that there was no need for segregated default funds for different asset classes as EMIR creates obstacles for segregated default funds. One Member State indicated itself reluctant to any changes regarding the three issues mentioned as none would enforce EU CCPs attractiveness, while another Member State considered itself open to amendments, especially regarding investment policy.

4.2.3. Supervision – Elements to be improved in EU CCP supervision

Improved attractiveness, competitiveness and capacity of EU CCPs should, over time, lead to significant additional volumes of clearing in the EU, increased activities in EU CCPs and therefore increased cross-border activity within the EU. In this context, further consideration should be given on how to ensure that the related risks could be appropriately managed through a robust and efficiently functioning system for the supervision of EU CCPs. Two options were suggested; the supervision of all or certain EU CCPs at EU level and the enhancement of the EMIR 2.2 supervisory framework.

One EU authority stated they have more insight in third-country CCPs than in the EU ones and are of the opinion that this should change. Another EU authority agreed that the latter should have a more important role in the supervision of EU CCPs, in particular in coordinating responses at times of crises.

Six Member States expressed the view that supervision should not be fundamentally changed by granting ESMA with the power to supervise some or all EU CCPs. Two of

them stated that fiscal responsibility should go hand in hand with supervisory responsibility and therefore were clearly against the supervision of all or certain EU CCPs at EU level. Three others agreed that an enhancement of the EMIR 2.2. supervisory framework would be sufficient, while the other Member State said that changes to the supervisory framework might require changes to the CCP Recovery and Resolution Regulation[191] (CCP RRR) while the need to ensure alignment between supervisory and fiscal responsibility should not be exaggerated and they are still against reopening the CCP RRR. One Member State said that while it was reluctant to changes to ESMA's responsibility it was in favour of strengthening ESMA's coordinating function in emergency situations as well as introducing a stronger cross-sectoral monitoring mechanism for the EU's exposures to Tier 2 CCPs. Furthermore, it was not in favour of mixed supervisory teams due to the lack of clear responsibilities. Yet another Member State indicated to be in favour of reassessing the supervision of EU CCPs, making processes leaner for market participants. However, that Member State was against enlarging the role of the central banks of issue. One Member State said that to assess the issue properly, they would need more data.

4.2.4. Other Issues Raised

4.2.4.1. Third-country CCPs

Some stakeholders suggested adding more proportionality to the framework by reducing or removing the requirement for a third-country to have a regime in place providing access to EU CCPs. Two Member State stated that the equivalence framework has caused level playing field problems. However, they indicated to need for more time to evaluate the suggested options. Another Member State supported more proportionality for smaller jurisdictions, but opposed any self-assessment by banks.

One EU authority stated that more information about the consequences would be needed, in particular about the definition of a small jurisdiction. It pointed out that otherwise a circumvention may be possible for jurisdictions, which might be difficult to challenge, if they claim to be small and no information were provided nor could be asked for.

4.2.4.2. Intragroup transactions

Several stakeholders underlined in the targeted consultation the need to address the issue of intragroup transactions. Absent a solution, transactions between an EU firm – financial and non-financial – and its subsidiary abroad would become subject to the clearing obligation or margin requirements. Two EU authorities stressed the need to be mindful of the use of intragroup transactions by EU groups and the importance to require that the risk at group level should be managed from within the EU. They however agreed on the need to move forward and find a permanent solution. Four Member States intervened and confirmed the need to address the issue.

4.2.4.3. Clearing thresholds

EMIR requires that standardised OTC derivatives contracts are centrally cleared and, where not possible, that collateral is exchanged to reduce the risks. According to a recent report by ESMA and a large number of contributions, notably energy firms, to the

[191] Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (Text with EEA relevance); OJ L 22, 22.1.2021, p. 1–102.

targeted consultation, EU energy firms are getting closer to reaching, or have reached, the clearing threshold for "OTC commodity derivative contracts and other OTC derivative contracts". Consequently, they have or will become subject to the margin requirements. In its report on the commodity clearing threshold, ESMA suggested amending the methodology to calculate the position in OTC derivatives that count towards the clearing threshold by replacing the reference to OTC derivatives with a reference to uncleared derivatives and aligning the clearing threshold methodology with the methodology set in Article 11, and in particular paragraph 3 on the requirements to exchange initial margins.

Three Member States said they would need time to assess, while one indicated that in general, it sees room for improvement. One EU authority as well as one Member State indicated that leveraging on EMIR data would be too difficult and is likely to not work.

4.2.4.4. Scope of CCP authorisation/extension of services

Feedback from some stakeholders in the targeted consultation drew attention to a possible inconsistency in EMIR relating to the scope of a CCP's activities. Certain CCPs are authorised or recognised to clear products which are not financial instruments nor traded on financial markets[192]. The same issue might emerge should CCPs intend to start clearing certain crypto-assets which are not financial instruments.

No Member State took the floor to express its opinion on the matter outlined.

4.2.4.5. SFD

Respondents to the consultation on clearing suggested that the Settlement Finality Directive[193] (SFD) could be amended in several ways, in particular apply the SFD protection to all systems operated by a CCP (even if not designated under the SFD). However, this would give considerable discretion to CCPs letting them benefit from the SFD protections and it would bring the risk of mixing the financial and non-financial sphere.

One EU authority was in favour of considering the change proposed by stakeholders. In its opinion, broadening the SFD protections would address a problem that some CCPs have which want to extend their services to other products that are not in the list of securities/financial instruments under the SFD (notably commodity derivatives). No Member State took the floor to express its opinion on the matter outlined.

5. Call for evidence on the review of the central clearing framework in the EU

The Commission launched a call for evidence to collect evidence on ways to improve the attractiveness of EU CCPs and enhance their supervision. The feedback period ran from 8 February 2022 to 22 March 2022. 1 response was received.

The only respondent welcomed the consultation and called for an extension of the list of eligible collateral at EU CCPs, increased transparency in CCP margin models, increased predictability of margin calls by CCPs and a substantial increase of the clearing threshold for commodities.

[192] For EU CCPs see ccps_authorised_under_emir.pdf (europa.eu). For third-country CCPs see thirdcountry_ccps_recognised_under_emir.pdf (europa.eu)

[193] Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45–50).

ANNEX 3: WHO IS AFFECTED AND HOW?

1. Practical implications of the initiative

The preferred aggregated option will imply the following obligations:

- **EU CCPs** do not have any specific new obligations under this initiative. They will benefit from streamlined processes to launch new products/services or adapt risk models. Their communication with supervisors may be also streamlined with strengthened cooperation among supervisors. These measures will decrease the overall regulatory costs that CCPs face. In addition, EU CCPs will benefit from increased clearing flows which will generate additional revenue.

- **EU clearing members and clients** will have to open and maintain an active account at EU CCPs. Clearing members will need to enhance their clearing offer towards their clients by systematically proposing to clear in EU CCPs. These measures imply potentially significant adjustment costs for clearing parties, especially in terms of netting benefits lost. The magnitude of this cost impact will depend on the requirement and respective calibration to clear a proportion of new trades at EU CCPs, as well as on market developments (e.g. increase in offer by EU CCPs). Overtime these costs can gradually reduce due to market adaptations. In addition, there will be some administrative costs related to reporting on active account requirements.

- **EU and national supervisors** will need to adapt their internal procedures and supervisory approach in line with the amended requirements. This will imply some change costs. In the long-run, the measures should in fact reduce day-to-day costs of supervision given streamlined requirement.

2. Summary of costs and benefits

The tables below summarise the expected benefits and costs of the preferred initiative for the affected stakeholders. It should be noted that no significant costs or benefits are expected to arise for citizens, hence the overview of costs focuses on stakeholder categories expected to bear some additional costs.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
	Direct benefits	
Administrative costs reductions	Ongoing reduction of compliance costs for CCPs: total EU-wide ongoing cost reduction of ca. EUR 5 million to ca. EUR 15 million (assuming 10 Article 15 or 49 procedures per year for all EU CCPs). The more detailed breakdown of cost savings per procedure follows: • For option A2: Reduction of staff needed thanks to simplified procedures: approx. 0.5 FTE per year, costing approximately EUR 150 000. • Reduction of costs related to legal opinions: potential saving between EUR 10 000 and EUR 250 000 (depending	This benefit stems from the simplified approval procedures and replacement of ex-ante approval by ex-post approval for some changes. Standardised documents and greater clarity on what needs to be submitted will require less substantive and legal work. Greater clarity is also expected limit the needed interaction with supervisors (i.e. currently duplicative and contradicting rules and requests).

	on the procedure and the fees charged) per procedure. • Reduction of costs of external consultants for an art. 15 or 49 procedure: savings between EUR 200 000 and EUR 350 000 per procedure. • Reduction of costs of hiring staff for these procedures (assuming a 1-year contract): savings of approx. EUR 1 300 per day over 1 year or approx. EUR 475 000 per annum. • Reduction of staff needed for a given procedure: approx. 1.6 FTEs for a given procedure over 1 year, costing approximately EUR 300 000.	
Improved capacity for oversight and management of financial stability risks and supervisory capacity of ESMA, central banks of issue and national supervisors	No estimate available.	Due to enhanced and more efficient cooperation between ESMA, central banks of issue and national supervisors, supervisors will be able to better monitor relevant financial stability risks. Notably, clarification of roles of different supervisory entities, reduction of duplications and improved knowledge sharing and more frequent cooperation will contribute to this effect together with greater clarity as to minor vs major changes in activities and models efficiencies. Central banks and ESMA would benefit from having a clearer overview on EU CCPs and relevant financial stability risks, which is important for their role.
Indirect benefits		
Lower financial stability risks	Societal benefit. No estimate available.	A positive impact on financial stability is expected to arise (i) by reducing concentration rates and over-reliance on non-EU CCPs (ii) reducing frictional costs in case of developments or problems with a third-country CCP which would require a massive shift of positions towards EU CCPs, and (iii) by ensuring that EU supervisors are given adequate powers and monitoring capabilities.
Benefits for the single market of enhanced supervisory cooperation and convergence	Societal benefit. No estimate available.	Strengthened role for EU authorities in the supervisory framework and streamlined cooperation. Ongoing benefits in terms of higher supervisory standards for CCPs and financial stability
Enhanced offer possibilities for EU CCPs and reduced opportunity costs. Market participants benefit from increased competition between EU and third-country CCPs and greater clarity	The opportunity costs associated with long and burdensome procedures are difficult to estimate but translate into lost business, impact on the CCP's reputation (loss of credibility) and missed revenues. Stakeholder feedback points at complex and unclear supervisory requirements as a significant hurdle to bringing new products to the market and thus the attractiveness of EU CCPs, hence the impact of their removal is likely moderate to large.	Faster and clearer procedures for launching new products and changing risk models are expected to result in an ongoing increase in EU CCPs' capacity to bring new products to the market and change risk models. This should lead to greater choice for market participants (e.g. more CCPs to choose from to clear specific derivatives). Greater clarity for market participants from standardised documents and shorter time for supervisors to approve changes. Cost

		savings for EU CCPs may also be potentially passed on to clearing members and clients.
More opportunities for clearing members and clients	No estimate available, depending on market developments and choices of EU CCPs regarding launch of new products.	This initiative will enable EU CCPs to bring more products to the market and make their product offer more attractive, and will encourage EU clearing members and clients to clear with EU CCPs. Clearing members and clients are thus expected to have more choices for clearing their trades and can potentially benefit from increased competition.
Administrative cost savings related to the 'one in, one out' approach*		
Administrative cost reductions (described above)	Approximately EUR 5-15 million EUR of administrative cost savings per year (described above) ; EU-wide total.	As described above. These cost savings relate to a simplification of administrative obligations at EU level (of existing EMIR rules) and hence all related reductions in expenses count under "one in, one out".

II. Overview of costs – Preferred option

		Businesses – EU CCPs		**Businesses – EU clearing members and clients**		**Administrations (supervisors, ESMA)**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Supply-side measures	Direct adjustment costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	Moderate cost of setting up new IT tools	Operating new IT tools; less time to assess proposed actions
	Direct administrative costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Direct regulatory fees and charges	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Direct enforcement costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Indirect costs	No cost impact identified	Costs of setting up and operating new IT tools by supervisors may be reflected in increased supervision fees[194]	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
Demand-side measures	Direct adjustment costs	No cost impact identified	No cost impact identified	Costs for clearing members and clients to reduce excessive	Potentially significant costs, depending on the precise calibration and	No cost impact identified	No cost impact identified

[194] But potential savings from streamlined cooperation would have an opposite effect which would (partially or even fully) mitigate this.

				exposures or increase capital to meet higher requirements (depending on the precise calibration and their choices[195])	choice of individual companies[196], notably higher costs of clearing (e.g. loss of netting benefits)[197] and/or, opportunity costs of holding higher capital to meet requirements for non-EU CCP exposures.		
	Direct administrative costs	No cost impact identified	No cost impact identified	Paperwork related to opening an account (expected to be negligible)[198]	Reporting costs in relation to active account requirements	Setting up systems to monitor active account compliance	On-going monitoring of active account compliance
	Direct regulatory fees and charges	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Direct enforcement costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Indirect costs	No cost impact identified	Minimal additional costs of reporting on more accounts (expected to be negligible)	No cost impact identified	Clients will face a small increase in clearing fees as clearing member pass on cost increases from maintaining multiple accounts[199]	No cost impact identified	More enforcement may be needed as EU business volumes grow
Supervision	Direct adjustment costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	Modification of procedures and tools to the new supervisory cooperation framework	Resource implications of cooperation in joint supervisory teams and to the joint cross-border monitoring system (e.g.

[195] Magnitude of these costs cannot be reliably assessed as they depend on the precise calibration of the measures which will be established through delegated/implementing acts (which will consider cost implications to the degree possible) and on choices of companies. Hence it cannot be determined upfront and is likely to vary by company depending on its specific situation.

[196] Magnitude of these costs cannot be reliably assessed as they depend on the precise calibration of the measures which will be established through delegated/implementing acts (which will consider cost implications to the degree possible) and on choices of companies. Hence it cannot be determined upfront and is likely to vary by company depending on its specific situation. At the same time, this cost is expected to be potentially significant in size.

[197] Expected to be partially mitigated over the medium to long term by market adaptation

[198] As some clearing participants (e.g. clients) that do not already have an account at an EU CCP will have to open one.

[199] These costs are expected to decrease over time as the market adapts to the new situation by moving positions.

							staff, meetings)
	Direct administrative costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	Additional paperwork related to modification of tools and procedures (likely low)	Additional paperwork related to enhanced cooperation
	Direct regulatory fees and charges	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Direct enforcement costs	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
	Indirect costs	No cost impact identified	Increased costs of supervision may be passed on to CCPs via increased supervision fees	No cost impact identified	No cost impact identified	No cost impact identified	No cost impact identified
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	No cost impact identified	No cost impact identified	Costs for clearing members and clients to reduce excessive exposures or increase capital to meet higher requirements (described above and depending on calibration and).	Potentially significant costs, depending on the precise calibration and choice of individual companies (described above) and/or, opportunity costs of holding higher capital to meet requirements for non-EU CCP exposures.		
	Indirect adjustment costs	No cost impact identified	Increased costs of supervision may be passed on CCPs via increased supervision fees	No cost impact identified	Clients may face an increase in costs of clearing when the clearing member maintains multiple accounts.[200] Indirect cost, not subject to off-setting under "one in, one out".		
	Administrative costs (for offsetting)	No cost impact identified	No cost impact identified	One-off costs related to paperwork for opening an account	No cost impact identified		

[200] These costs are expected to decrease over time as the market adapts to the new situation by moving positions.

				(expected to be negligible)[201] Small ongoing costs for reporting of active account requirements			

3. Relevant sustainable development goals

III. Overview of relevant Sustainable Development Goals – Preferred Option(s)		
Relevant SDG	**Expected progress towards the Goal**	**Comments**
SDG no. 8 – decent work and economic growth education	Expected to contribute positively to target 8.10 "Strengthen the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all"	The impact is expected to be achieved by developing capital market infrastructure in the EU and safeguarding risks that would result in disruption in access to clearing

[201] As some clearing participants (e.g. clients) that do not already have an account at an EU CCP will have to open one. This is a simple process consisting of filling out several documents. Even if the number of new clients was high, this cost would be relatively small overall. Hence it was not considered proportional to attempt more precise costing.

ANNEX 4: ANALYTICAL METHODS

The analysis carried out as part of the impact assessment is based on three methodological approaches:

1. desk research;

2. qualitative analysis; and

3. quantitative analysis.

The data used to calculate the expected benefits and costs stem from a variety of different data sources. Sources include the targeted consultation that ran from January 2022 to March 2022, stakeholder meetings especially with CCPs, clearing members such as the European Banking Federation (EBF) and the Futures Industry Association (FIA), information provided by supervisors as well as other direct contributions (including confidential ones) received. Additional data was collected from publicly available sources (e.g. websites and annual statements of CCPs) and from the European Securities Markets Authority (ESMA), the ESRB and the ECB.

The analysis is strongly based on cost estimates provided by supervisors, market participants and CCPs. In some cases, the data analysed cannot be publicly distributed given an extremely limited number of data points on specific market actors. Making such information public may allow identification of the contributor. Publication of this data could provide information to active or potential competitors which may allow them to gain insights as to cost functions and other sensitive corporate information, thus leading to unfair competitive advantages. This data has been considered by the Commission in its analysis and the results are reflected qualitatively in this impact assessment. To that end, respective figures have been presented in the Impact Assessment to the Regulatory Scrutiny Board as part of the impact assessment scrutiny process as coming from confidential contributions. Some data has been removed afterwards as the publication would lead to identification of the contributor.

In addition to limitations on making data public, the presented analysis faces several methodological limitations. In particular, supervisory data such as reported to trade repositories by market participants is available to supervisors and certain other authorities only but not to the Commission or the general public. While the impact assessment sought data from supervisors, some datasets could not be shared directly. This applies especially to data which would identify individual market actors. In effect, the Impact Assessment relies on the analyses carried out by supervisors and can often refer only to qualitative insights gained therefrom.

As concerns data provided by market participants, a significant limitation and likely bias arises from the economic interest of market participants. There is a strong incentive for market participants to maintain the status quo in terms of current clearing arrangements. In effect, it is likely that costs figures provided are inflated in order to increase the perceived costs, especially as concerns the demand side measures analysed. More generally, however, market participants have been reluctant to share data for fear of providing insights into their operational structure, as well as cost structure and business strategies; for example, depending on their internal IT systems, compliance costs may vary considerably from clearing member to clearing member for certain changes. A further challenge is that not all clients are easily identifiable, making it more difficult to gather data in a targeted manner.

In addition, certain costs will depend strongly on the respective calibration (e.g. active account requirement). Where an obligation is further calibrated under level 2 acts, as is the case for the obligation to clear a certain proportion of transactions considered of substantial systemic importance to the EU in EU CCPs, these costs will be assessed in detail at a later stage in the development of level 2 requirements. These technical rules will be prepared by ESMA, and for the one to calibrate the level of clearing in EU CCPs, this RTS would be developed in cooperation with ESRB, EBA and EIOPA and in consultation with the ESCB to ensure the broadest institutional involvement possible. The related standards will be developed and adopted after an open public consultation has taken place and the potential related costs and benefits have been analysed, as required under, for example, the ESMA Regulation[202].Lastly, the analysis faces significant difficulties to assess quantitatively the benefits that arise in terms of financial stability. While a qualitative assessment is possible in terms of aspects such as supervisors' tools, monitoring ability and powers, it is not possible to convert this into a cost saving figure. The envisaged amendments will address mainly tail risks (e.g. CCP default) which, while clearly present, cannot be estimated with any reasonably degree of accuracy.

This, in combination with a lack of data, makes the meaningful estimation on the effects of the presented options difficult to provide and qualitative information was used and presented to make the case for the presented preferred options. While the Commission does expect these benefits to materialise, these will also depend on future business decisions taken by the respective CCPs, for example to what extent they extend the services they offer.

[202] ESMA Regulation EU (No) 1095/2010, Article8(3).

ANNEX 5: TABLES AND FIGURES

Table 1: List of authorised EU CCPs[203]

No	Name of the CCP	Identification Code of CCP (LEI)	Country of establishment	Competent authority	Date of initial authorisation
1	Nasdaq OMX Clearing AB	54930002A8LR1AAUCU78	Sweden	Finansinspektionen	18 March 2014
2	European Central Counterparty N.V.	724500937F740MHCX307	Netherlands	De Nederlandsche Bank (DNB)	1 April 2014
3	KDPW_CCP	2594000K576D5CQXI987	Poland	Komisja Nadzoru Finansowego (KNF)	8 April 2014
4	Eurex Clearing AG	529900LN3S50JPU47S06	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (Bafin)	10 April 2014
5	Cassa di Compensazione e Garanzia S.p.A. (CCG)	8156006407E264D2C725	Italy	Banca d'Italia	20 May 2014
6	LCH SA	R1IO4YJ0O79SMWVCHB58	France	Autorité de Contrôle Prudentiel et de Résolution (ACPR)	22 May 2014
7	European Commodity Clearing	529900M6JY6PUZ9NTA71	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (Bafin)	11 June 2014
8	Keler CCP	529900MHIW6Z8OTOAH28	Hungary	Central Bank of Hungary (MNB)	4 July 2014
9	CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (CCP.A)	529900QF6QY66QULSI15	Austria	Austrian Financial Market Authority (FMA)	14 August 2014
10	BME Clearing	5299009QA8BBE2OOB349	Spain	Comisión Nacional del Mercado de Valores (CNMV)	16 September 2014
11	OMIClear - C.C., S.A.	5299001PSXO7X2JX4W10	Portugal	Comissão do Mercado de Valores Mobiliários (CMVM)	31 October 2014
12	ICE Clear Netherlands B.V.[204]	7245003TLNC4R9XFDX32	Netherlands	De Nederlandsche Bank (DNB)	12 December 2014
13	Athens Exchange Clearing House (Athex Clear)	213800IW53U9JMJ4QR40	Greece	Hellenic Capital Market Commission	22 January 2015
14	SKDD-CCP Smart Clear d.d (SKDD-CCP)	747800E0OA8S9CM7RR46	Croatia	Hrvatska agencija za nadzor financijskih usluga (HANFA)	29 October 2021

Table 2: List of recognised third-country CCPs[205]

[203] https://www.esma.europa.eu/sites/default/files/library/ccps_authorised_under_emir.pdf.
[204] Previously named Holland Clearing House B.V
[205] https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf

id	Name of the CCP	CCP short name	Country of establishment	Date of recognition	Date of last review	Tier
1	ASX Clear (Futures) Pty Limited	ASXF	Australia	27 April 2015	8 March 2022	Tier 1
2	ASX Clear Pty Limited	ASX	Australia	27 April 2015	8 March 2022	Tier 1
3	Hong Kong Securities Clearing Company Limited	HKSCC	Hong Kong	27 April 2015	18 March 2022	Tier 1
4	HKFE Clearing Corporation Limited	HKFE	Hong Kong	27 April 2015	18 March 2022	Tier 1
5	OTC Clearing Hong Kong Limited	OTCHK	Hong Kong	27 April 2015	18 March 2022	Tier 1
6	The SEHK Options Clearing House Limited	SEOCH	Hong Kong	27 April 2015	18 March 2022	Tier 1
7	Japan Securities Clearing Corporation	JSCC	Japan	27 April 2015	9 March 2022	Tier 1
8	Tokyo Financial Exchange	TFX	Japan	27 April 2015	9 March 2022	Tier 1
9	Central Depository (Pte) Limited	CDP	Singapore	27 April 2015	8 March 2022	Tier 1
10	Singapore Exchange Derivatives Clearing	SGXDC	Singapore	27 April 2015	8 March 2022	Tier 1
11	ICE Clear Singapore	ICSG	Singapore	24 September 2015	8 March 2022	Tier 1
12	JSE Clear	JSEC	South Africa	27 January 2016	Review of recognition still ongoing	Tier 1
13	ICE NGX Canada Inc.[3]	NGX	Canada	27 January 2016	8 March 2022	Tier 1
14	Canadian Derivatives Clearing Corporation	CDCC	Canada	27 January 2016	8 March 2022	Tier 1
15	Asigna Compensacion y Liquidacion	ACYL	Mexico	27 January 2016	8 March 2022	Tier 1
16	SIX x-clear AG	SIXX	Switzerland	23 March 2016	9 March 2022	Tier 1
17	Korea Exchange, Inc.	KRX	South Korea	22 April 2016	9 March 2022	Tier 1
18	Chicago Mercantile Exchange, Inc.	CME	United States of America	13 June 2016	8 March 2022	Tier 1
19	ICE Clear Credit LLC	ICC	United States of America	28 September 2016	8 March 2022	Tier 1
20	Minneapolis Grain Exchange, Inc.	MGEX	United States of America	28 September 2016	8 March 2022	Tier 1
21	ICE Clear US, Inc.	ICUS	United States of America	14 December 2016	9 March 2022	Tier 1
22	National Securities Clearing Corporation	NSCC	United States of America	8 March 2022	n/a	Tier 1
23	Dubai Commodities Clearing Corporation	DCCC	United Arab Emirates	29 March 2017	18 March 2022	Tier 1
24	The Clearing Corporation of India Ltd	CCIL	India	29 March 2017	n/a	Subject to review of recognition
25	Nasdaq Dubai Ltd	NDL	Dubai International Financial Centre	29 March 2017	18 March 2022	Tier 1

26	B3	B3	Brazil	29 March 2017	9 March 2022	Tier 1
27	Nodal Clear, LLC	NCL	United States of America	29 March 2017	8 March 2022	Tier 1
28	New Zealand Clearing Limited	NZX	New Zealand	24 May2017	8 March 2022	Tier 1
29	Indian Clearing Corporation Limited	ICCL	India	27 September 2017	n/a	Subject to review of recognition
30	NSE Clearing Limited[8]	NSCCL	India	27 September 2017	n/a	Subject to review of recognition
31	India International Clearing Corporation (IFSC) Limited	IICC	India	6 May 2019	n/a	Subject to review of recognition
32	NSE IFSC Clearing Corporation Limited	NICCL	India	24 June 2019	n/a	Subject to review of recognition
33	Multi Commodity Exchange Clearing Corporation Limited	MCXCCL	India	3 December 2019	Review of recognition still ongoing	Tier 1
34	LCH Limited	LCH	United Kingdom	1 January 2021	n/a	Tier 2
35	ICE Clear Europe Limited	ICEU	United Kingdom	1 January 2021	n/a	Tier 2
36	LME Clear Limited	LMEC	United Kingdom	1 January 2021	n/a	Tier 1
37	Options Clearing Corporation	OCC	United States of America	27 June 2022	n/a	Tier 1
38	Fixed Income Clearing Corporation	FICC	United States of America	27 June 2022	n/a	Tier 1
39	ComDer Contraparte Central	CDER	Chile	8 August 2022	n/a	Tier 1
40	Shanghai Clearing House	SHCH	China	27 September 2022	n/a	Tier 1
41	Dubai Clear LLC	DUBC	United Arab Emirates	27 September 2022	n/a	Tier 1

Table 3: Involvement of colleges and ESMA in decisions adopted by national supervisors

EMIR provisions	**College opinion[206]**	**ESMA opinion (draft prepared by CCP Supervisory Committee)[207]**
Access to a CCP (Art. 7)		✓
Access to a trading venue (Art. 8)		✓
Authorisation of a CCP and its procedures (Art. 14 and 17)	✓	✓
Extension of activities or services (Art. 15)	✓	✓
Withdrawal of authorisation (Art. 20)	✓	
Review and evaluation of the CCP's compliance with EMIR regularly, at least annually (Art. 21)	(No opinion, but College is informed)	
Emergency situations (Art. 24)	(No opinion, but College is informed)	(No opinion, but ESMA is informed)

[206] Articles 18 and 19 of EMIR.
[207] Article 23a of EMIR.

Record-keeping (Art. 29)		✓
Shareholders and members with qualifying holdings (Art. 30-32)	✓	✓
Conflicts of interest (Art. 33)		✓
Outsourcing (Art. 35)	✓	✓
General provisions on conduct of business (Art. 36)		✓
Validation of models and parameters for margins (Art. 41(2))	✓	
Review of models, stress testing and back testing (Art. 49)	✓	(ESMA validation required in addition to an NCA validation)
Interoperability arrangements (Art. 51)	✓	
Approval of interoperability arrangements (Art. 54)	✓	✓

ANNEX 6: OPTIONS DISCARDED AT AN EARLY STAGE

Certain options were discarded at an early stage as inconsistent with the EU legal framework or with financial stability considerations that are at the heart of EMIR and of this initiative. These options refer, in particular, to measures targeting the supply side of clearing services (Section 5.2.1), measures targeting the demand side of clearing services (Section 5.2.2), and relying on an approach based on global coordination.

Concerning the supply side of clearing services, two options were discarded as they fall within the competence of central banks: granting all EU CCPs the same access to central bank liquidity facilities, irrespective of the need for a banking licence; and the extension of the operating hours of payment systems (Target 2) beyond the current closing time (6 p.m.). The same level of access to central bank liquidity facilities for EU CCPs irrespective of them holding a banking license could contribute to improving the attractiveness of the EU central clearing framework and bringing the EU in line with other jurisdictions, e.g. the UK or the US. Stakeholders consider this option to be effective or rather effective in contributing to the objectives of the initiative, and Member States' feedback[208] was also overall positive. ESMA also assessed this option as worth exploring, since requiring a banking license leads to additional costs without clear added value.[209] However, in the EU access to central bank facilities is the exclusive competence of central banks and linked to their independence as grounded in the TFEU. As regards Target 2 operating hours, extending them would allow clearing participants to meet late-hour CCP margin calls in euros instead of relying on other currencies (typically, US Dollars), as Euro payments cannot be processed after Target 2 closes[210]. Respondents to the targeted consultation also generally supported this option, also because it would reduce the dependence of EU clearing participants on US Dollar liquidity. However, these types of operational initiatives are not regulated under EMIR. Consequently, these options were not further assessed.

As regards the demand of clearing services, the option of broadening the scope of products subject to a clearing obligation was discarded. Stakeholders generally did not see the specific need to extend the range of products subject to the clearing obligation, as the criteria for including new products are already clear in the EMIR framework; only products that are liquid and standardised enough could qualify for a clearing obligation. CCPs, on the other hand, were generally in favour of an extended scope. However, extending the scope of the clearing obligation is already possible under EMIR following a procedure involving ESMA. The procedure requires an analysis as to if the mentioned criteria are met before imposing a clearing obligation. These criteria are associated with financial stability and they should be duly assessed for any new category of products to be made subject to a clearing obligation. In light of the above, a more regular review by ESMA of the products rather than any specific changes to the criteria for the clearing obligation is considered more appropriate.

Another option concerning the demand of clearing services which was discarded is imposing a straightforward obligation to clear all derivative transactions at EU CCPs

[208] Derivatives and Market Infrastructures Member States Working Group on 30 March 2022 and on 16 June 2022.

[209] See ESMA's reply to the targeted consultation on clearing, 1 April 2022, see footnote 100.

[210] Ancillary services are available after Target 2 closes.

and/or Tier 1 CCPs. The vast majority of respondents were against an amendment of Article 5 of EMIR resulting in a clearing obligation for new contracts which could only be fulfilled through authorised EU CCPs and/or recognised Tier 1 CCPs. Several Member States also opposed such a measure[211]. This option was discarded as disproportionate at this stage.

The option to oblige pension scheme arrangements to clear is not considered here as this requirement already exists and will kick in on 19 June 2023.

As regards the option of relying on coordination at the global level, following on from the G20 commitments in Pittsburgh[212], there is cooperation on standard-setting among the major jurisdictions. The EMIR framework is based on the Principles for Financial Market Infrastructures set by the relevant international body (CPMI-IOSCO); EMIR implements then in the EU in an ambitious way, sometimes even going beyond them[213]. The EU also participates in the monitoring of their implementation and regularly discusses implementation issues in the relevant international fora. As described in this impact assessment different jurisdictions have chosen different ways to implement the international principles for financial market infrastructures. Within these frameworks, third-countries, such as Japan or the US, have also opted to manage their exposure to foreign entities to protect their financial and economic system from undue risks. Japan requires Japanese entities to clear their home currency-denominated interest rate derivatives through a local CCP[214], while the US has a more expansive approach to supervision, complemented by the possibility to grant additional powers to the Federal Reserve over UK CCPs. The UK too has a specific regime for exposures to third-country CCPs. A globally-agreed approach to the exposures to third-country CCPs is difficult to achieve because jurisdictions have developed their own approaches and do not share the same situations and interests. As such, the option of relying solely on international cooperation has been discarded at an early stage.

Finally, the option of granting permanent equivalence to certain third countries is discarded here too. Such an approach would not mitigate the risks for EU firms and the wider EU financial system arising from substantially systemic exposures and thus be ineffective. More importantly, this impact assessment cannot tie the hands of a future Commission, in particular if the regulatory and supervisory framework of a third country, e.g. the UK, were to diverge from that of the EU, which remains a possibility.

[211] Derivatives and Market Infrastructures Member States Working Group on 30 March 2022.

[212] https://www.bis.org/cpmi/info_pfmi.htm

[213] E.g. in some instances EMIR has more prescriptive requirements than those set out in the PFMIs, 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 (the PFMIs require CCPs that either have a more complex risk profile or are systemically important in multiple jurisdictions to maintain this level of 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 (PFMIs require CCPs that either have a more complex risk profile or are systemically important in multiple jurisdictions to consider maintain this level of resources).

[214] See CEPS, 2021, "Setting EU CCP policy – much more than meets the eye".

ANNEX 7: BACKGROUND

1. THE OVER-THE-COUNTER (OTC) DERIVATIVES MARKET

A derivative is a financial contract whose value is linked to a change in the price of an underlying asset, a basket of assets or other benchmark or index. They allow for a transfer of risks between market participants and are often used to cover the risks (e.g. interest rate, exchange rate risks).[215] Derivatives can also be used for speculative purposes. Examples of assets on which a derivative contract can be written include equities or commodities (metals, oil, cereals…). OTC derivatives can therefore have a significant impact on the real economy, from mortgages to food prices. The value of a derivative can also be derived from the value of a market variable (e.g. interest rate benchmark, exchange rate or a stock index). Although derivatives are generally used to cover the risk of changes in the value of the underlying asset, the way markets work means that the price of the derivative can influence on the price of the underlying asset and vice-versa.[216]

An OTC derivative contract is privately negotiated between two firms and not traded on regulated markets. It is tailored to the specific needs of the counterparties. Derivatives traded on a regulated market are called exchange traded derivatives (ETDs), by nature, these are standardised and generally less risky than OTC derivatives.[217] As of end-June 2021, the outstanding notional of OTC derivatives amounted to EUR 514 trillion, corresponding to 88% of the overall derivatives market.[218] Interest rate derivatives represent 80% of outstanding OTC derivatives, of which 60% are cleared through CCPs.

OTC derivatives were at the heart of the 2008-2009 financial crisis for several reasons including the lack of transparency in those markets, the leverage[219] market participants could build through them, as well as the risk they expose parties to the contract to, and the resulting interconnectedness throughout the financial system. To address those risks, the G20 decided in 2009 to make the OTC derivatives market more transparent by reporting contracts to trade repositories and requiring all standardised OTC derivatives to be traded on exchanges or electronic platforms and centrally cleared, while also ensuring that uncleared derivative transactions are appropriately risk managed. In the EU, this was implemented via the European Market Infrastructure Regulation (EMIR) in 2012.

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[215] E.g. an airline company will want to "lock" the price of fuel over a period of time or an insurance company will want to make sure it is protected from the risk of rising interest rates that would lower the present value of the securities it has invested in.

[216] This is particularly true as the outstanding notional of derivatives is not limited to the outstanding notional of the underlying they refer to. E.g. more call options on a stock can be written than there are stocks in circulation, if all those options are exercised at the same time the price of the stock will naturally go up.

[217] The key advantages of ETDs over OTC Derivatives are their standardisation, liquidity and the fact that there is no default risk attached to them as the obligations are guaranteed by the exchange.

[218] BIS, OTC derivatives statistics: https://www.bis.org/statistics/derstats.htm

[219] Leverage results from using borrowed capital as a funding source when investing in an asset. Just as they can refer to more stocks than have been issued, through leverage, derivatives can offer an exposure to x times the performance of a given stock, benchmark or index.

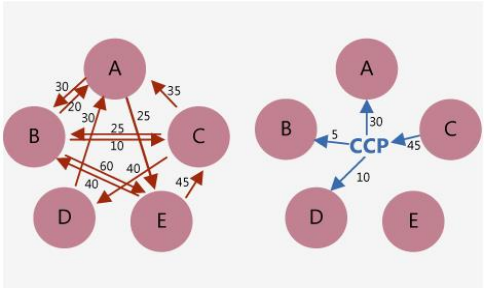
2. CLEARING

CCPs interpose themselves between counterparties to a financial instrument or product, becoming the buyer to every seller and the seller to every buyer in a process known as clearing. EMIR defines clearing as the process of establishing positions, including the calculation of net obligations, and ensuring that financial guarantees (or 'collateral') are available to secure the exposures arising from those positions.[220] CCPs become the focal point for derivative transactions, linking multiple financial actors, increasing market transparency and reducing some risks. As a corollary, CCPs concentrate risk and should therefore be regulated and supervised accordingly.

3. CCPS ARE VITAL INFRASTRUCTURES FOR THE FINANCIAL SYSTEM

CCPs are at the centre of financial markets. They play a key role in mitigating counterparty credit risk in transactions involving a range of financial instruments and products, thereby contributing to the reduction of systemic risk.[221] By interposing themselves between parties to transactions, CCPs simplify the network of counterparty exposures and lower the average counterparty credit risk[222] through multilateral netting techniques, i.e. a payment arrangement under which transactions among multiple counterparties are grouped and settled on a net basis, rather than settled individually (Figure 4). These techniques could reduce exposures and, as a result, central clearing may also mitigate systemic risk by reducing the risk that the default of one or several clearing members propagates from counterparty to counterparty.

Figure 4 - Exposures network: from non-centrally cleared to centrally cleared derivatives



Source: BIS[223]

A limited number of clearing members typically access CCPs directly, while a wide array of clients and indirect clients access CCPs via clearing members or clients respectively. Clients and indirect clients typically include medium sized banks, small financial companies, investment funds, insurance companies as well as non-financial companies. Direct CCP membership is concentrated in a limited number of entities, as CCPs impose stringent criteria to clearing members, notably in terms of financial robustness,

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220 See EMIR, Article 2(2).

221 Systemic risk refers to the risk that the inability of one participant to meet its obligations in a system will cause other participants to be unable to meet their obligations when they become due, potentially with spill over effects (e.g. significant liquidity or credit problems) threatening the stability of or confidence in the financial system. That inability to meet obligations can be caused by operational or financial problems.

222 The risk that a counterparty will not settle an obligation for full value, when due or at any time thereafter. Credit risk includes pre-settlement risk (replacement cost risk) and settlement risk (principal risk).

223 "Central clearing: trends and current issues", December 2015, available at http://www.bis.org/publ/qtrpdf/r_qt1512g.htm

operational capacity and product expertise.[224] Typically in the EU, a clearing member is a large credit institution subject to prudential requirements under the Capital Requirements Regulation[225], engaging with CCPs to trade on their own account or that of their clients.[226]

Post-crisis reforms have focused on establishing clearing obligations for standardised OTC derivatives, but **CCPs clear a much wide and diverse range of financial instruments and products**. Instruments cleared by CCPs differ in risk profile, ranging from the clearing of securities which are liquid assets and for which a key risk lies in the settlement of transactions, usually over a few days, to long term OTC derivatives which can become highly illiquid in times of stress and have market, liquidity and credit risk spread over several years.

Contracts cleared by CCPs can be outright purchases and sales of securities (bonds or equities), commodities, Securities Financing Transactions[227] ('SFTs', including repurchase agreements, i.e. repos), or derivatives, whether traded on an exchange (listed) or bilaterally (OTC). A large number of CCPs only clear securities and SFTs in their local markets, but about half of them also clear derivatives, locally or internationally. In contrast, most CCPs established in the EU clear several product classes, from listed and OTC financial and commodity derivatives to cash equities, bonds and repos.[228] EU financial market participants can use EU authorised CCPs and CCPs established outside of the EU, if recognised by ESMA.[229]

4. CLEARING IN THE EU

4.1. Increasing volumes of clearing

Since the adoption of EMIR and the introduction of a clearing obligation for standardised OTC derivatives and the creation of incentives for central clearing (see Section 1.4.1), the number of centrally-cleared contracts, in particular for interest-rate and credit derivatives, has significantly increased. (Figure 5).

The outstanding gross market value of transactions cleared by CCPs globally reflects the introduction of central clearing obligations across asset classes as well as a broad acceptance of the benefits of central clearing by market participants. The notional amounts of centrally cleared OTC derivatives transactions outstanding at the end of June

[224] EMIR imposes non-discriminatory, transparent, objective criteria to ensure fair and open access.

[225] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013.

[226] See, e.g. the list of active clearing members at Eurex Clearing AG: https://www.eurex.com/ec-en/join/clearing-contacts

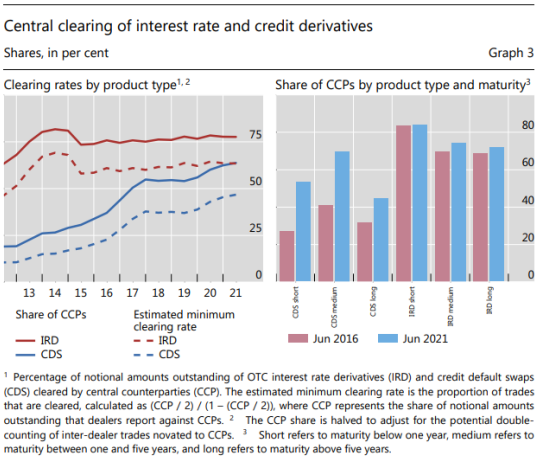
[227] Securities financing transactions (SFTs) allow the use of assets, e.g. shares or bonds, to secure funding for their activities. A securities financing transaction can be: a repurchase transaction - selling a security and agreeing to repurchase it in the future for the original sum of money plus a return for the use of that money; lending a security for a fee in return for a guarantee in the form of financial instruments or cash given by the borrower; a buy-sell back transaction or sell-buy back transaction; a margin lending transaction.

[228] "List of Central Counterparties authorised to offer services and activities in the Union", ESMA, November 2021: https://www.esma.europa.eu/sites/default/files/library/ccps_authorised_under_emir.pdf

[229] "List of third-country central counterparties recognised to offer services and activities in the Union", ESMA, August 2021: https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf

2021 was estimated at USD 610 trillion,[230] of which USD 488 trillion was attributable to interest-rate derivatives and USD 8.8 trillion was attributable to credit default swaps. The gross market value of those derivatives represented USD 8.9 trillion and USD 205 billion, respectively. For interest-rate derivatives, 75% of the outstanding notional amount was centrally cleared, with a corresponding share of 64% for credit derivatives. The share of centrally-cleared transactions in other segments of OTC derivatives markets remains negligible (about 4% of the outstanding notional amount for OTC foreign exchange derivatives and roughly 1% for equity-linked contracts[231]), mainly due to the absence of a central clearing obligation.

Figure 5: Growth of central clearing (notional amounts outstanding by counterparty in percent)



Source: BIS derivatives statistics, November 2021[232]

EEA30 derivatives stood at EUR 244 trillion in outstanding total notional amount, down from EUR 254 trillion a year earlier[233]. Market composition changed slightly, with interest rate derivatives (IRDs) accounting for 79% of notional amount in 4Q20 (up from 76% in 4Q 2019) while 13% of the notional amount was in currency (down from 16%), with 8% remaining in equity, credit and commodities. Credit institutions and investment firms were the most significant counterparties, these were counterparties in close to 75% of contracts by outstanding notional amount. OTC derivatives contracts still accounted for most of the outstanding notional amount, 92%, but 16% of all notional amount was in on-trading venue OTC contracts, while 8% was in exchange traded derivatives (ETDs). Central clearing rates in Q4 2020 were 71% of the notional amount in IRDs and 41% in credit derivatives, both up on a year earlier (from 68% and 38% respectively).[234]

230 Statistical release: OTC derivatives statistics at end June 2021, November 2021, https://www.bis.org/publ/otc_hy2111.pdf

231 There is little benefit to centrally clear FX derivatives as the main risk they pose is settlement risk, a risk better mitigated through payment and settlement systems. Equity derivatives represent a very small portion of the derivatives market and have the characteristic of not being highly standardised as interest rates and credit derivatives can be.

232 Statistical release: OTC derivatives statistics at end June 2021, November 2021, https://www.bis.org/publ/otc_hy2111.pdf

233 As of end 2020. See EU Derivatives Markets, ESMA Annual Statistical Report, 2021. https://www.esma.europa.eu/sites/default/files/library/esma50-165-2001_emir_asr_derivatives_2021.pdf

234 As a continued part of the single market during the transition period, the UK remained central to EU derivative markets in 2020, about half of contracts by notional amount have a UK counterparty, and a quarter in contracts are held between two EEA30 counterparties.

Since June 2016, certain interest-rate and credit derivatives need to be centrally cleared;[235] mandatory central clearing for other derivatives can be required by the Commission on the basis of a recommendation by ESMA if liquidity picks up and the criteria for the clearing obligation are deemed fulfilled.[236] Further requirements exist to mitigate risk in bilateral transactions[237] by imposing higher collateral requirements (as agreed by the G20) and to strengthen the incentives to move to central clearing (where possible and available).[238] The higher collateral requirement on bilateral transactions has attracted many entities towards central clearing, e.g. insurance companies and pension funds or, even though the latter do not currently fall within the scope of the EMIR clearing obligation. This trend is likely to continue in 2022 with the entry into force of the requirements for the last class of entities to be subject to the framework.[239]

4.2. Concentrated and integrated CCP landscape

Most CCPs (and other market infrastructures) were originally established to serve national needs. Today, many of these CCPs provide their services across national borders, regardless of the currency denomination, and the market for the provision of clearing services is highly concentrated.

While the volume of transactions cleared in the EU has increased substantially, the number of CCPs remains high compared to other jurisdictions with a limited range of products offered for clearing. Currently, there are 14 CCPs[240] established in the EU and authorised under EMIR to offer clearing services in the EU. Some of these EU CCPs are also authorised, recognised or registered by third-country authorities to provide clearing services to non-EU clearing members or trading venues.

Not all EU CCPs are authorised to clear all asset classes. In the case of some asset classes, there is only a small number of EU CCPs offering clearing services (e.g. only one EU CCP clears credit derivatives, only two EU CCPs clear inflation-rate derivatives). In addition to EU CCPs, a further 38 third-country CCPs have been

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[235] The central clearing determinations covering OTC interest rate swaps (IRS) related to the Euro, the USD, the Yen, the British Pound, the Norwegian Krone, Polish Zloty, and Swedish Krona as well as Credit Default Swaps (CDS) apply to all counterparties above the clearing thresholds. See Commission Delegated Regulation (EU) 2015/2205, Commission Delegated Regulation (EU) 2016/1178 and Commission Delegated Regulation (EU) 2016/592.

[236] The detailed compliance deadlines for the central clearing determination applying to various asset classes and to different types of counterparties are available here: https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf

[237] Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 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 for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, OJ L 340, 15.12.2016, p. 9–46.

[238] These requirements follow international standards developed by the BCBS and IOSCO. For further information, see http://www.bis.org/bcbs/publ/d317.htm

[239] From 1 September 2022, counterparties having, or belonging to a group having an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 8 billion will have to start exchanging initial margin. See Commission Delegated Regulation (EU) 2016/2251.

[240] A list of those CCPs and the classes of financial instruments covered by their authorisations can be found here: https://www.esma.europa.eu/sites/default/files/library/ccps_authorised_under_emir.pdf.

recognised by ESMA under EMIR, including UK CCPs in September 2020 enabling them to offer their services in the EU.[241]

The number of recognised third-country CCPs reflects the EU's commitment to integrated financial markets and international standards.[242] Once recognition has been granted, the third-country CCP may provide services to clearing members established in the EU and to EU trading venues, EU counterparties may use the third-country CCP to clear OTC derivatives subject to the EMIR clearing obligation, in the same way as an EU CCP. Such recognition also allows EU clearing member banks to benefit from preferential risk weightings for calculating the capital requirements associated with the trade exposures and default fund contributions towards those third-country CCPs.[243]

Despite having 52 CCPs authorised or recognised under EMIR for clearing worldwide, central clearing markets are generally concentrated in a few CCPs located outside of the EU, and are highly concentrated in respect of some asset classes.[244] As a consequence, the EU is heavily reliant on certain third-country CCPs. For instance, according to the ESRB, at end-December 2020, SwapClear, the clearing service of LCH Ltd (a CCP established in the UK) for interest rate derivatives, cleared more than 90% of centrally cleared OTC interest rate derivatives globally. In terms of EU currencies, SwapClear cleared more than 80% of the volume of EUR-denominated OTC IRDs and more than 90% of the volume for OTC IRDs denominated in other EU currencies.[245] Additionally, there are CCPs established outside of the EU that have no substitute globally to their clearing offer (e.g. LME Ltd in the UK which clears commodity derivatives).

4.3. Big differences in product offerings

Most CCPs, albeit with some exceptions, operate mainly as regional or national hubs based on the currencies of the instruments they clear, with instruments being traded and cleared by and between local participants in local CCPs. The exceptions are a few 'global' CCPs offering services for a broad range of products to a wide spectrum of clearing members and clients.

EU CCPs initially developed their offer on the basis of the needs of local market participants, i.e. serving local equity and bond markets as well as derivatives allowing hedging in the local currency. With the introduction of the euro and the development of the single market, some CCPs have started to offer products that are of interest to the

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[241] ESMA provides a list of the third-country CCPs recognised to offer services and activities in the Union, including the classes of financial instruments covered by the recognition. See Annex 5.

[242] See G20 Leaders' St Petersburg Declaration of September 2013 (paragraph 71): "*We agree that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulatory regimes*.", as well as the G20 Leaders' Brisbane declaration of November 2014 (paragraph 12): "*We call on regulatory authorities to make further concrete progress in swiftly implementing the agreed G20 derivatives reforms. We encourage jurisdictions to defer to each other when it is justified, in line with the St Petersburg Declaration*".

[243] Under the CRR, exposures to 'qualifying' CCPs (QCCPs) are treated as less risky than exposures to 'non-qualifying' CCPs (non-QCCPs) and are subject to lower capital requirements. A QCCP is defined as a central counterparty that has been authorised or recognised in accordance with EMIR; see point (88) of Article 4(1) of Regulation (EU) No 575/2033.

[244] See ESMA's statement on its assessment of systemically important UK CCPs; https://www.esma.europa.eu/press-news/esma-news/esma-publishes-results-its-assessment-systemically-important-uk-central

[245] According to sources available to the Commission.

international community. However, given the prominent role London has taken over the years as a financial hub while the UK was part of the EU, thanks to the regulatory environment offered by the single market, the trading and clearing of derivatives developed and concentrated in the UK.

In general, **most EU clearing members active in UK CCPs are also participants in EU CCPs**. For example, as regards LCH Ltd, the level of participation of EU clearing members varies per clearing segment and is the highest in SwapClear, which is used by 47 EU clearing members from 12 Member States.[246] The top three EU clearing members in SwapClear include BNP Paribas (France), Deutsche Bank (Germany) and Société Générale (France)[247]. Among the top 30 clearing members at SwapClear, 9 are from the EU. Currently, the main alternative to SwapClear in the EU is Eurex Clearing and most EU clearing members active at SwapClear are also clearing members in Eurex Clearing[248]. However, LCH Ltd is able to offer the clearing of some contracts in certain third-country currencies, due to the economies of scale achieved and due to its extended membership. Overall, Eurex Clearing offers clearing of fewer currencies.

Table 4 shows the participation in LCH Ltd: in addition to participants from the EU, the high number of participants from other jurisdictions should also be noted.

Table 4. Clearing members per LCH Ltd clearing service (end of June 2021)

Business Segment	Number of EU clearing members	Number of non-EU clearing members	Total number of clearing members
SwapClear	47 (AT, BE, DE, DK, ES, FR, FI, IE, IT, NL, PL, SE)[249]	75	122
ForexClear	9 (DE, ES, FR, NL)	24	33
Listed Rates	2 (FR)	14	16
RepoClear	43 (BE, DE, DK, ES, FR, IE, IT, LU, NL)	63	106
EquityClear	19 (FI, FR, DE, IE, IT, NL, ES)	22	41

Source: ESMA Report, December 2021

Given SwapClear's dominant market share in OTC interest rate derivatives, an important number of EU entities have direct or indirect access to this service to be able to clear products under the clearing obligation. For the other segments, EU entities' reliance is lower due to the absence of the clearing obligation and the availability of alternative services at other CCPs.

A significant number of EU **clients[250],** from 23 Member States, are also active at SwapClear[251]. Some, but not all, of the clients are subject to the clearing obligation for interest rate derivatives. Participation of EU clients in SwapClear is greater than in Eurex Clearing. For example, the clearing activity of pension scheme arrangements (for cleared swaps) is split between Eurex and LCH Ltd in the same proportion as for the rest of the market, i.e. LCH Ltd has a very dominant market share.[252]

[246] See 2021 ESMA report on UK CCPs (see footnote 9 above).
[247] See 2021 ESMA report on UK CCPs (see footnote 9 above).
[248] See 2021 ESMA report on UK CCPs (see footnote 9 above)..
[249] In addition, one Norwegian entity is a clearing member of SwapClear.
[250] EU credit institutions, pension funds, insurance companies, other funds and corporates. See Glossary.
[251] See 2021 ESMA report on UK CCPs (see footnote 9 above).
[252] ESMA Letter to the European Commission, 1 February 2022, https://www.esma.europa.eu/press-news/esma-news/esma-recommends-clearing-obligation-pension-funds-start-in-june-2023

Also in the case of ICE EU, the largest EU clearing members participate in both its clearing segments (the futures and options segment and the CDS segment), as shown in Table 5 below. A significant number of major non-EU clearing members also participate[253]. The CCP is estimated to have an important market share for these products in Europe, notably for the transactions of EU clearing members.

Table 5. Clearing members per ICEU clearing service (end June 2021)

Business Segment	Number of EU clearing members	Number of non-EU clearing members
CDS	15 (DE, ES, FR, IE, IT)	15
F&O	20 (DE, ES, FR, IT, NL, SE)	55

Source: ESMA Report, December 2021

EU CCPs offer a range of products to large international banks, funds and institutional investors as well as non-financial companies including: cash equity markets at EuroCCP; euro general collateral repos at LCH SA or Eurex Clearing; EURO STOXX futures at Eurex Clearing; interest rate derivatives in multiple currencies in Eurex Clearing; credit default swaps in a broad range of EU and US underlyings at LCH SA; some commodity and energy products at ECC (power, natural gas, emission allowances, pulp). See Annex X for further information.

LCH Ltd, for example, offers clearing of **interest rate derivatives** in 27 currencies, referencing different benchmark rates across a wide range of available maturities (See Table 6)[254]. LCH Ltd clears products denominated in all EU currencies, including all IRDs subject to the clearing obligation[255]. The market share of SwapClear is estimated to be above 90% for these products.[256] Within LCH Ltd, the activity in products denominated in EU currencies is relatively important compared to other currencies with a share of around 27%.

Table 6. Example of different CCP offer: LCH Ltd SwapClear vs Eurex Clearing

[253] See 2021 ESMA report on UK CCPs (see footnote 9 above).

[254] ESMA Assessment Report under Art. 25(2c) of EMIR, 16 December 2021.

[255] LCH Ltd offer includes all OTC Interest Rate Derivatives subject to the clearing obligation, which are EUR/GBP/USD/JPY/NOK/PLN/SEK-denominated Basis Swaps, interest rate swaps, forward rate agreements and overnight index swaps. These contracts are subject to the clearing obligation pursuant to Commission Delegated Regulation (EU) 2015/2205 and the Commission Delegated Regulation (EU) 2016/592.

[256] According to confidential information provided to DG FISMA services.

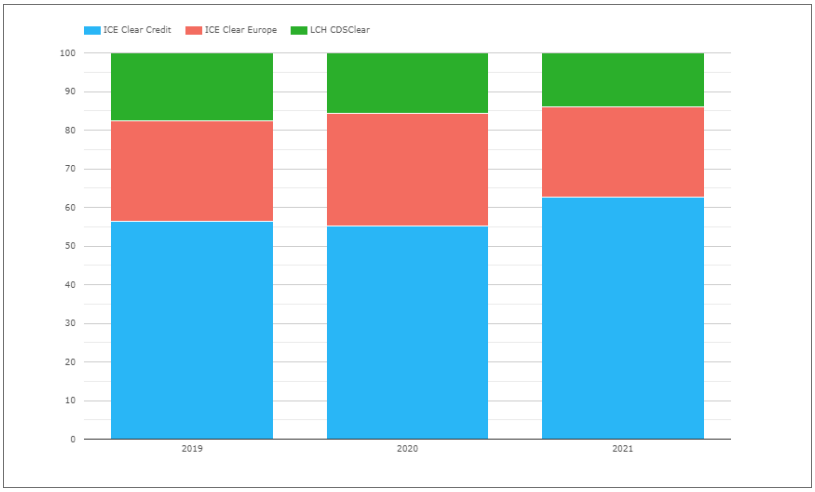
	LCH Ltd	Eurex Clearing
CO Transactions[257]	EUR, USD, GBP, JPY, NOK, PLN, SEK	EUR, USD, GBP, JPY, NOK, PLN, SEK
IRS, ZC, Basis, VNS, FRA, OIS	EUR, USD, GBP	EUR, USD, GBP
	CHF, JPY	CHF, JPY
	DKK, SEK, NOK	DKK, SEK, NOK
	PLN, CZK, HUF	PLN, CZK, HUF
	AUD, CAD, HKD, MXN, NZD, SGD, ZAR, BRL, CLP, CNY, COP, INR, KRW, ILS, THB, TWD	AUD, CAD, HKD, MXN, NZD, SGD, ZAR, BRL, CLP, CNY, COP, INR, KRW, ILS, THB, TWD
Inflation	EUR, GBP, USD	EUR, GBP, USD
Basis Overnight/IBOR	AUD, CAD, EUR, GBP, JPY, NZD, SGD, USD	AUD, CAD, EUR, GBP, JPY, NZD, SGD, USD

Source: CCP websites, green: similar product offering, orange: partial match (not all maturities available), red: no product offering

Clearing members and clients argued that to benefit from portfolio margining[258], and because of the correlation between currencies, there is an incentive to clear all interest rate swaps in the CCP offering the widest range of currencies available for clearing.[259] (See Section X). LCH Ltd, for example, currently provides a wider currency offer than EU CCPs.

Another example is **credit default swaps (CDSs)**. Before the global financial crisis, CDS clearing was in ICE Clear Credit in the US and ICE Clear Europe (ICEU) in the UK. ICEU offers clearing of EU CDSs executed in the OTC market, which includes 148 index products, 200 corporate single names, and 7 sovereign single names[260]. It contains products subject to the EU clearing obligation. An alternative offer was launched in 2010 in LCH SA.[261] In recent years, LCH SA's offer grew from a very low market share, nevertheless, as shown in Figure X, ICE Group CCPs continue to dominate the market.

Figure 6: Market Share of EUR iTraxx



257 Interest rate derivatives subject to a clearing obligation at the time of writing.

258 Portfolio margining is groups transactions where risk factors are correlated to one another, the amount of collateral required by the CCP can be reduced while achieving the same level of risk mitigation.

259 Responses to the targeted consultation and confidential contributions to DG FISMA services as part of the work of the Commission Working Group in 2021.

260 See 2021 ESMA report on UK CCPs (see footnote 9 above).

261 https://secure-area.lchclearnet.com/media_centre/press_releases/2010-10-05_2.asp

Source: ClarusFT

Table 7. Illustrative example: CCP CDS services

	ICEU	ICE Clear Credit LLC	LCH SA
Clearing Obligation	Itraxx Europe Main	Itraxx Europe Main	Itraxx Europe Main
	Itraxx Europe Crossover	Itraxx Europe Crossover	Itraxx Europe Crossover
Other Indexes	Itraxx Senior Financials	Itraxx Senior Financials	Itraxx Senior Financials
	Itraxx Sub Financials	Itraxx Sub Financials	Itraxx Sub Financials
	CDX.NA.IG	CDX.NA.IG	CDX.NA.IG
	CDX.NA.HY	CDX.NA.HY	CDX.NA.HY
Single Name	European Corporates	European Corporates	European Corporates
Sovereigns	AT	AT	AT
	BE	BE	BE
	ES	ES	ES
	IE	IE	IE
	IT	IT	IT
	NL	NL	NL
	PT	PT	PT

Source: CCP websites, green: similar product offering, red: no product offering

ICEU also offers clearing of futures and options, including **short-term interest rate derivatives (STIR futures)**.[262] In both the CDS and the futures and options segments of ICEU, the euro is the most significant currency of denomination. Some EU CCPs also offer STIR futures, but they do not offer the same range as ICEU. Eurex Clearing, for example, has a similar offer for EUR-denominated products, including Euribor Futures.[263] However, ICEU is dominant in Euribor Futures with more than 90% of total open interests while volumes traded and cleared in, e.g. Eurex Clearing, represent 0.2%.[264]

Finally, though none of these asset classes are subject to a clearing obligation, there is currently no offer in the EU for **certain commodity derivatives**, e.g. metal or oil derivatives such as those offered in LME Ltd or ICE Clear Europe, as well as no offer for the clearing of **foreign exchange derivatives** such as those offered in LCH Ltd.

4.4. Liquidity

The number of trades (volume) and currency value of trades in a product or market can be used as a (rough) indicator of liquidity. For example, LCH Ltd is one of the largest CCPs worldwide in term of the value of cleared transactions, and has been growing in recent years[265]. The OTC derivatives segment has in particular grown following the G20 mandate of 2009 to centrally clear all standardised OTC derivatives (Figures 7 and 8).

[262] The Futures and Options service of ICE EU clears energy and commodity derivatives; listed interest rate derivatives, including short-term European interest rate futures contracts (STIR); listed equity derivatives. See 2021 ESMA report on UK CCPs (see footnote 9 above).

[263] See 2021 ESMA report on UK CCPs (see footnote 9 above).

[264] https://www.risk.net/comment/6726646/swaps-data-a-new-era-of-competition-in-interest-rate-futures

[265] See 2021 ESMA report on UK CCPs (see footnote 9 above).

Figure 7. LCH Ltd Cleared Value Worldwide Ranking, 2019

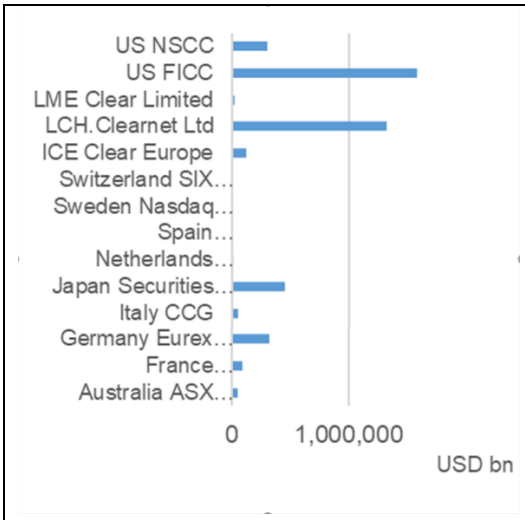
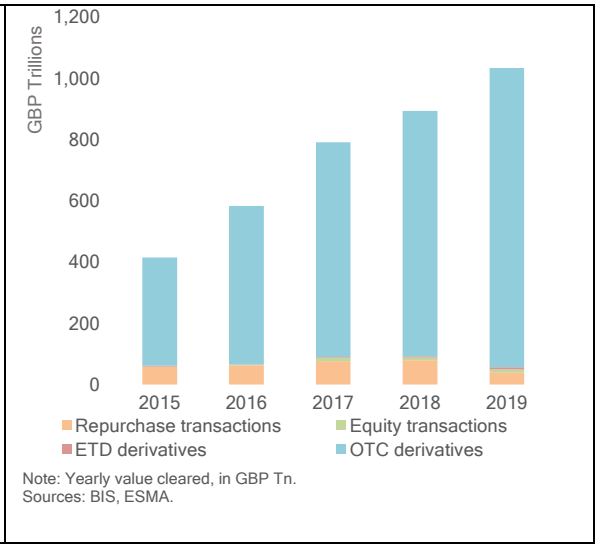


Figure 8. LCH Ltd Cleared Value 2015-2019

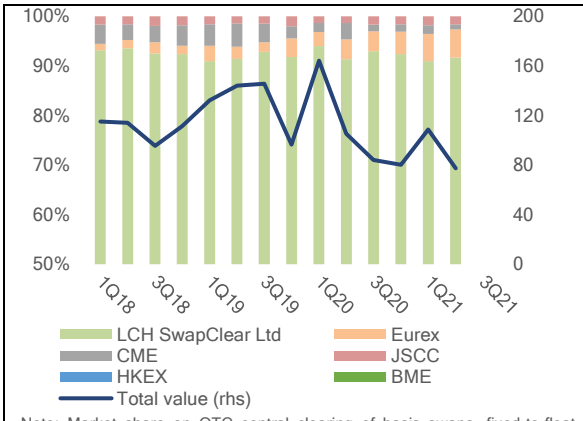


Note: Yearly value cleared, in GBP Tn.
Sources: BIS, ESMA.

Source: CPMI Statistics Payments and Financial Market Infrastructures, 2021

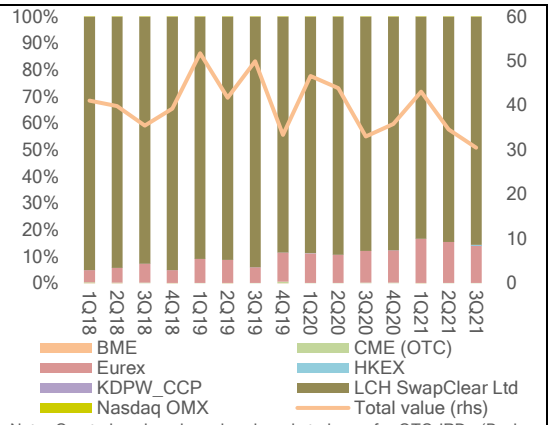
Moreover, SwapClear has the highest market share in interest rate derivatives under the clearing obligation (Figure 9) and more in general in EU currencies (Figure 10).

Figure 9. Market share OTC IRD under Clearing Obligation (EUR, USD, JPY, GBP)



Note: Market share on OTC central clearing of basis swaps, fixed-to-float swaps, forward rate agreements and overnight indexed swaps in EUR, USD, JPY or GBP, in %. Quarterly notional volumes cleared, in EUR tn (rh axis).
Sources: Clarus Financial Technology, ESMA.

Figure 10. Market share OTC IRDs in EU currencies



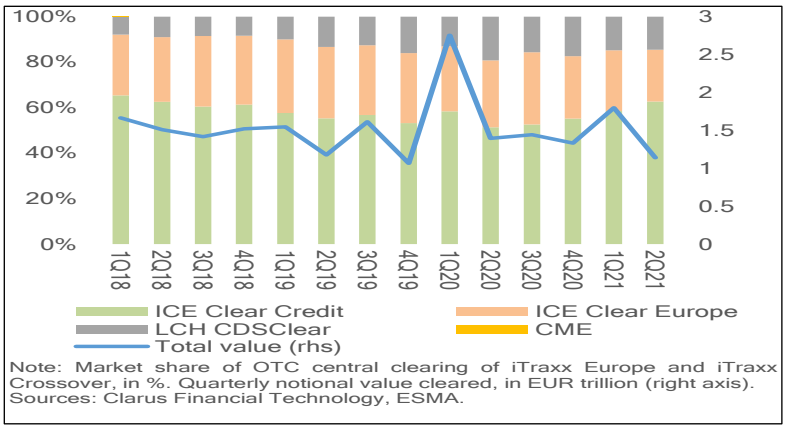
Note: Quarterly value cleared and market shares for OTC IRDs (Basis, FRA, IRS, inflation,OIS, VNS, ZC) denominated in EUR, CZK, DKK, HUF, NOK, PLN, SEK and ZAR. In EUR Tn.
Sources: Clarus Financial Technology, ESMA.

The other UK-based CCP classified as systemically important (Tier 2 CCP) under EMIR, ICE Clear Europe, is also one of the largest in terms of the value of cleared transactions, compared to its EU peers[266]. As described in Section 2.2.3, ICE Clear Europe offers clearing of CDSs and short-term interest rate derivatives (STIR futures). LCH SA offers the same clearing of CDSs as ICEU (except for CDSs on sovereigns). The market for the clearing of the two main euro-denominated index CDSs is split almost evenly between ICEU and LCH SA, even if the situation has recently changed, with the relocation of some CDS trading to the US (See Figure 11). As regards STIR futures (which are not

[266] See 2021 ESMA report on UK CCPs (see footnote 9 above).

subject to the clearing obligation), ICEU is the only CCP to have access to the trading venue of reference for the STIR products, namely ICE Futures Europe.

Figure 11. Market share CDS under the clearing obligation



Note: Market share of OTC central clearing of iTraxx Europe and iTraxx Crossover, in %. Quarterly notional value cleared, in EUR trillion (right axis).
Sources: Clarus Financial Technology, ESMA.

EUROPEAN
COMMISSION

Brussels, 7.12.2022
SWD(2022) 698 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the documents

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

and

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions

{COM(2022) 697 final} - {SEC(2022) 697 final} - {SWD(2022) 697 final}

Need for action

EU financial markets are critically dependent on some services provided by certain third-country central counterparties (CCPs), leading to significant financial stability risks for the EU. The United Kingdom (UK) is the main location for clearing euro-denominated derivatives, with a market share of more than 90%. The European Central Bank (ECB) and the Commission identified clearing as a significant financial stability risk for the EU if EU market participants were to abruptly lose access to UK CCPs. This resulted in the adoption of an equivalence decision in September 2020. In this decision, the Commission reiterated the message to EU market participants to reduce their excessive exposures to CCPs established in the UK. Such reduction however has not happened to date.

Engagement with relevant EU bodies such as the European Securities and Markets Authority (ESMA), the ECB, the European Systemic Risk Board and the Single Supervisory Mechanism, within an ad-hoc working group on clearing established by the Commission, confirmed the existence of the problem and its risks for financial stability. Discussions within the working group have led to conclude that significantly reducing those excessive exposures in an orderly and controlled manner would necessitate a combination of legislative and non-legislative changes in the years to come. These changes would be needed to: (i) improve the attractiveness of clearing in the EU; (ii) encourage infrastructure development in the EU; and (iii) enhance supervisory arrangements in the EU in order to ultimately address relevant financial stability risks.

Without further EU action, market participants will very likely continue to clear in those systemic third-country CCPs, thus maintaining, even increasing, the over-reliance described. This carries significant financial stability risks in case of a stress-scenario involving a third-country CCP or in case of a sudden loss of access to its services.

Possible solutions

Available policy options were identified on the basis of ESMA's 2021 report assessing systemically important UK CCPs, the discussions with the above EU bodies and in the working group on clearing and a targeted public consultation. The measures considered in the impact assessment aim to address problems on both the supply and demand side as well as the increasing EU cross-border risks which arise as a consequence of growing EU clearing flows.

On the supply side, in order to improve the attractiveness of CCPs located in the EU for market participants, several options are considered to streamline the procedures or introduce a simplified mechanism allowing CCPs to make changes on their models and parameters in a swift and business friendly way.

On the demand side, in order to encourage clearing in EU CCPs, several options are considered: one disincentivising banks' excessive exposures to CCPs, one requiring market participants to maintain an active account at EU CCPs, one broadening the scope of entities clearing in the EU, one facilitating access to clearing for clients and indirect participants, and a combination of these options.

Finally, in order to strengthen the framework for EU CCP supervision to better take into account cross-border risks, thus ensuring financial stability, two options are considered, one streamlining the supervisory framework and introducing joint supervisory teams under the responsibility of the national supervisors, and the other creating a single supervisor for EU CCPs.

Several options were discarded in the first stage, notably mandating clearing in the EU or requiring that the clearing obligation be fulfilled in EU CCPs or less risky third-country CCPs. The following options were also discarded in the first stage: granting all EU CCPs access to central bank facilities, extending the Target 2 operating hours and broadening the scope of the clearing obligation.

Impacts of the preferred option

The analysis selected preferred options based on their contribution to specific objectives of this initiative which are to: (i) improve the attractiveness of EU CCPs, (ii) encourage clearing in EU CCPs, and (iii) allow for a stronger consideration of cross-border risks, as well as their cost-effectiveness and coherence.

On the supply side, a combination of streamlined procedures and an ex-post validation mechanism was selected as the preferred option. This would allow to achieve simplification of the current procedures to the greatest extent possible while preserving financial stability. The assessment concludes that this combination would be best suited to achieve the first specific objective (improving the attractiveness of EU CCPs). As regards the second specific objective of encouraging clearing in the EU, this option could indirectly contribute to it by increasing the attractiveness of CCPs located in the EU for market participants. At the same time, it would reduce administrative and opportunity costs for EU CCPs more than either option considered in isolation.

On the demand side, the preferred option combines limiting banks' excessive exposures to CCPs, requiring the establishment of an active account, broadening the scope of market participants clearing in the EU and facilitating clearing by clients in order to remove obstacles to clearing by market participants that usually clear as clients. This will help address the over-reliance on third-country systemically important CCPs. It would achieve the specific objective of enhancing clearing in the EU more than each option considered individually and would strike a good balance between attaining the objective and limiting negative impacts on the market. It would clearly establish a requirement for increasing clearing volumes in EU CCPs, through the active account measure. At the same time, it would establish a credible framework for ensuring compliance by banks and investment firms – which are the most important financial counterparties. This option is considered the most suitable and feasible, as it is expected to avoid disruptive impacts on the competitiveness of EU clearing members and could be adapted and calibrated to take into account cost impacts for smaller clients, while allowing for a gradual reduction in exposures to systemically important CCPs, thus reducing the risks for the EU's financial stability.

With regards to supervision, based on the assessment and comparison of all options, the analysis shows that targeted amendments to the current supervisory framework are likely to be the most proportionate approach, albeit not necessarily being the most effective option for strengthening the consideration of cross-border risks. This option also considers concerns that more centralised CCP supervision at EU level would not be consistent with the ultimate responsibility for potentially supporting a CCP in a crisis, which under the CCP Recovery and Resolution Regulation remains with each CCP's Member State of establishment.

In terms of costs, while financial stability is a public good and therefore not quantifiable, the options retained can be calibrated to ensure that costs to market participants, CCPs, ESMA and national authorities are proportionate.