



Proposal for a Regulation as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing markets (“EMIR 3”)

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Based on the framework for centralised clearing established by EMIR and its implementing regulations, the proposal of the European Commission (EC) identifies certain areas that require simplification in order to promote the attractiveness of European central counterparties (CCPs) inside and outside the European Union (EU). Among other aspects, the proposal focuses on the lengthy and burdensome authorisation procedures for new clearing services and activities and procedures for changes in the CCPs risk models, which as a whole increase costs and reduce the general attractiveness of the EU as a place to do business. This proposal aims to mitigate these types of barriers in order to promote a modern and competitive clearing environment in the EU, which at the same time is safe and solid and which contributes to the achievement of the ultimate objectives of the Capital Markets Union (CMU) in Europe. It is worth noting that the EC has identified as a strategic element for the autonomy of the EU in the macroeconomic and financial spheres, having well-developed and resilient CCPs in order to reduce the risks deriving from excessive dependence on third-country CCPs and their supervisors. Likewise, and as an additional reflection for the promotion of a reinforced EMIR framework, it is considered appropriate to introduce the pertinent adjustments that underpin the financial stability of the EU in the face of economic disturbances, such as those recently experienced, in the summer of 2022, as a result of the high volatility recorded in the energy markets and liquidity problems observed in the related derivatives markets. The initiative has taken into account the comments from different stakeholders (EU bodies, Member States, the financial services sector, non-financial companies) in order to determine the key subjects on which to focus the review and as a result incorporates the following new features, disclosed below according to the objective that the proposal is intended to achieve.

Improving the attractiveness of EU CCPs

Among the measures introduced to attract business, some provisions have been included for CCPs' procedures to expand their product offerings aiming to be shorter and less complex, through a process that centralises timely information while flexible and cooperative when supervisors interact with each other (National Competent Authorities - NCAs -, ESMA and colleges) during the assessment. ESMA is expected to draw up the draft regulatory and implementing technical standards (RTS/ITS) detailing the information (documents, format and content) to be provided by the CCPs and which the NCAs will use for their assessments. Among the new features, it is proposed for exemptions of intra-group transactions (national and cross-border) the need for an equivalence decision is replaced by a list of jurisdictions for which an exemption cannot be granted. The third countries on this list would be those listed as high-risk third countries with strategic deficiencies in their anti-money laundering and counter terrorist financing regimes, together with those jurisdictions identified as non-cooperative for tax purposes. Apart from this, in relation to the authorisation process for additional services or

activities, it is proposed to give CCPs the possibility of submitting to a non-objection procedure, providing this does not entail an increase in the risks for the CCP. If the new activity is considered non-material, that is, it represents the clearing of financial instruments in a class that is already authorised, as long as they are traded on a trading venue for which it already provides its services and the new activity does not involve payment in a new currency, the CCP may start providing the service or performing the activity prior to authorisation. In other respects, in line with streamlining and simplification, the proposal introduces modifications in relation to CCPs model changes which, likewise, foresee the elaboration by ESMA of the appropriate RTS and ITS to that end. The provision of a non-objection procedure for the validation of CCPs model changes not considered material is also introduced, so that the CCP may start to use the model change before receiving the decision from the competent authority. The proposal also specifies which changes are considered material, among others: changes in the total pre-funded financial resources greater than 15%; changes in the margin parameters of the margin model greater than 15% at the CCP level; changes in the methodology for calculating portfolio offsets that involve margin requirements variations greater than 10%; changes in the methodology of the stress test scenarios that defines default fund exposures with an impact greater than 20% of a default fund or 50% of an individual contribution; changes in the liquidity model that imply variations in needs greater than 10% aggregate or 20% in any one currency; changes in the valuation of collateral (other than cash) such that its value changes by more than 10%. Among the measures to improve the attractiveness of EU CCPs, measures are introduced to increase transparency in order to ensure clients and indirect clients have better visibility and predictability of margin calls. In addition, in terms of collateral, the liquidity position of CCPs' participants has also been taken into consideration and CCPs are expected to continually review the level of their margins to reflect current market conditions and to consider pro-cyclical effects.

Likewise, regarding the authorisation to offer clearing services and activities, clarifications are included so that CCPs must be able to obtain authorisation in relation to non-financial instruments, in addition to financial instruments.

Finally, amendments related to liquidity have been considered. On the one hand, the set of entities considered for the assessment of liquidity risk is expanded: in addition to clearing members, the default of liquidity service providers, settlement service providers and any other service providers will also be considered. On the other hand, the eligibility of bank guarantees and public guarantees as highly liquid collateral is provided for in order to facilitate access to clearing, particularly for energy companies. For their part, CCPs must consider procyclical effects when reviewing haircuts on the assets they accept as collateral.

Measures to encourage central clearing in the EU to safeguard financial stability

In order to reduce the excessive exposure of EU clearing members and clients to third-country CCPs, which are of substantial systemic importance for the Union or for one or more of its Member States (Tier 2 CCPs), the proposal deems it appropriate to require all financial and non-financial counterparties subject to the clearing obligation to maintain, directly or indirectly, active accounts in EU CCPs. This is intended to address the negative impact on the financial stability of the Union that could be caused by a Tier 2 third-country CCP experiencing financial difficulties, which could have a detrimental impact on the sovereign bond markets and also hinder the transmission mechanism for the application of monetary policy. Along the same lines, the proposal seeks to contribute to the reduction of clearing services in Tier 2 third-country CCPs through a necessary and proportionate calibration, specifically of those clearing services of substantial systemic importance (interest rate derivative denominated in euros and zlotys; CDS denominated in euros; and short-term interest rate (STIR) derivatives denominated in euros.). Specifically, ESMA is expected to draw up, in cooperation with EBA², EIOPA³ and ESRB⁴, the appropriate RTS that determine the proportion of the activity in each category of derivative contracts considered of systemic importance to be carried out in CCPs within the EU and submit them to the EC one year after the entry into force of this proposal. In addition, the initiative proposes requiring clearing members and clients that provide clearing services to inform their clients about

the possibility of clearing a certain contract in an EU CCP and also introduces the obligation to inform their competent authority of the volume of clearing carried out in non-Union CCPs. In addition, the new requirements relating to clearing activities aimed at facilitating the participation of clients, provide for modifications in the regulation in the field of reporting and clearing obligations. Along these lines, for the sake of greater visibility, the exemption from the notification requirements of intra-group transactions for non-financial counterparties is removed. Also as a more flexible measure, an exemption from the clearing obligation is provided for transactions with pension schemes from third countries that are exempt from this obligation under their national law. In addition, in relation to the thresholds for applying the clearing obligation, it is proposed that only derivative contracts not cleared through an authorised CCP shall be included in the calculation of the positions. Lastly, clarifications are introduced in the field of participation requirements so that CCPs should not be allowed to be clearing members of other CCPs or to accept other CCPs or clearinghouses as clearing members or indirect clearing members. In addition, it is suggested that when a CCP accepts clearing members that are non-financial counterparties, they be required to demonstrate that they are capable of meeting the default funds and margin requirements. Once admitted as clearing members, they should not be allowed to offer clearing services to clients, but only to maintain accounts with the CCP for the assets and positions held for their own account.

Enhancing the assessment and management of cross-border risk

The proposed text contributes a number of improvements with the aim of ensuring that the supervisory framework for EU CCPs is sufficient to manage the risks associated with the interconnection of the Union's financial system and the increase in clearing volumes, in particular as regards cross-border risks. In short, for this purpose greater cooperation is encouraged in the continuous supervision of CCPs. The proposal introduces as a novelty the creation of a cross-sectoral Joint Monitoring Mechanism (JMM) that brings together EU bodies involved in the supervision of CCPs, clearing members and clients. ESMA will submit an annual report with the results of the activity to the European legislators for their strategic decisions. In addition, if it is considered that compliance with the active account requirement is not being ensured, it may issue guidelines or recommendations. Additionally, in order to intensify the cooperation of the authorities involved in the supervision of CCPs, there is provision for the creation of Joint Supervisory Teams (JST) which, among other functions, will participate in on-site inspections. In addition, they are expected to provide information to the authorities in non-objection procedures. Likewise, the proposal presents clarifications on competent authorities' requests for the opinion of ESMA and the college before making supervisory decisions, for example on record-keeping requirements or conflicts of interest. Likewise, it is proposed that competent authorities consult before adopting a decision to restrict or withdraw a particular service or activity (except in urgent cases). An opinion from the college is also expected when a competent authority considers the possibility of revoking the authorisation of a CCP, as well as when it conducts the annual review and evaluation of a CCP. Regarding the annual review, it is specified that the services or activities offered by the CCP must also be taken into account, along with details of the model changes adopted by the CCP through a non-objection procedure and, last but not least, that ESMA must assess the CCP's compliance with the relevant EMIR requirements. Additionally, it is proposed that in the event of non-compliance by a competent authority with one of the opinions of ESMA or the college, ESMA should publish this fact. The proposal foresees also that the role of ESMA is reinforced in the coordination of emergency situations and in the risk assessment, in particular at a cross-border level. Specifically, in emergency situations, it may call meetings of the CCP Supervisory Committee. ESMA is also empowered to require information from market participants and to issue recommendations to CCPs' competent authorities. In relation to this Supervisory Committee (which there is provision for central banks of issue and relevant authorities to attend) it is proposed that ESMA be empowered to map and identify the supervisory priorities, to consider cross-border risks including interconnections, interlinkages and concentration risks. Lastly, modifications have been proposed relating to third-country CCPs that affect the recognition procedure, which is no longer subject to an application but rather to the presentation to ESMA of all the information necessary for its review. Regarding the cooperation arrangements with the different jurisdictions,

they are expected to be proportionate and in the case of Tier 2 CCPs, they should provide for a broader and more frequent exchange of information. The initiative specifies that the agreements must grant ESMA the right to be informed in the event of financial difficulties of the CCP in the fields of recovery and resolution, as well as situations that may affect EU financial stability in the face of emerging crises. ESMA may revoke recognition in case of non-compliance with EMIR requirements, in addition to issuing a public notice where fees are not paid or where a CCP has not taken remedial action requested by ESMA.

Other considerations

Finally, the EC proposal considers the elaboration of a report in which it examines the application of the present regulation proposal and destined for the European Parliament and the Council, accompanied by the appropriate proposals. ESMA will also have to submit a report on its staffing and resources three years after the entry into force of this proposal. Finally, and to ensure consistency with other regulations, the proposal has an impact on the Capital Requirements Regulation (CRR⁵) and on the Money Market Funds Regulation (MMFR⁶), leading in the first case to a readjustment of the scope of the own funds requirement for credit valuation adjustment risk (in particular by clarifying which intra-group transactions can be excluded from that requirement), and in the second case to the exclusion of centrally cleared derivative transactions from the counterparty risk limits.

Useful links:

[Proposal for a Regulation as regards measures to mitigate excessive exposures to third-country central counterparties and to improve the efficiency of Union clearing markets](#)

[ESRB Letter to Members of the European Parliament on the EMIR Review](#)

¹Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

²European Banking Authority

³European Insurance and Occupational Pensions Authority

⁴European Systemic Risk Board

⁵Regulation (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

⁶Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds