



## **Review of EMIR (European Market Infrastructure Regulation)**

Further to the Communication of 4 May 2017, on 13 June the European Commission (EC) published a new proposal of Regulation (EU) XXX, known as EMIR 2.2, 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 accordance with the review required by EMIR. In its communication, the EC recognises that EMIR has had a very significant impact on reducing the number of OTC contracts not cleared through Central Counterparties (CCPs), although it recognises the need to undertake a reform in order to address several issues that have come to light through various sources and which will take on greater importance following the withdrawal of the United Kingdom from the EU.

The main issues to be addressed are as follows:

- 1) Given the volume of cross-border activity cleared by European CCPs, it is considered inappropriate that the supervisory colleges of each CCP are led by the Competent National Authority of the place where the CCP is located.
- 2) Bearing in mind the influence that CCPs have on payment systems and the fact that the main users of CCPs are credit institutions, a greater role should be given to Central Banks in the supervision model of CCPs as they are responsible for payment systems and for supervising credit institutions.
- 3) As a significant volume of financial instruments denominated in EU currencies are cleared by CCPs located in third countries, the equivalence regime for CCPs from non-EU countries needs to be strengthened, particularly with regard to ongoing supervision of said CCPs once equivalence has been granted.

As a result, the main EC proposals EMIR 2.1 (published in May 2017) and EMIR 2.2 relate to: a) changing the supervision and governance of CCPs in the European Union (EU), as well as the equivalence regime for CCPs located in third countries, which will be classified as non-systematically important or systematically important, giving the European Securities and Markets Authority (ESMA) a very significant role in these functions; b) giving greater importance to Central Banks in the supervisory governance of CCPs; c) simplifying the procedure for reporting transactions made in markets or by non-financial counterparties to the CCPs, which, if the proposal is permitted, will not have to include hedging transactions for the purposes of calculating the thresholds triggering the requirement to report transactions to the CCPs; d) exemption from reporting transactions to CCPs for small-sized financial institutions if their volume is below certain thresholds; and e) recognition of a temporary exemption for pension funds from clearing transactions in CCPs.

For further information, please, [click here](#).

### **Proposal for amending the supervision and supervisory governance of CCPs in the EU**

The EC has found that most transactions cleared in European CCPs were performed by participants in markets that are not resident in the jurisdiction where the CCP is located. The EC therefore proposes that supervision of CCPs located in the EU should be carried out jointly by ESMA and the Competent National Authority where the CCP is located. To this end, the proposal includes, in its impact assessment, providing ESMA with 47 staff members for supervision and three executives for coordination.

The staff engaged in these functions in ESMA would be hierarchically separate from its current structure and would form part of a new department named the CCP Executive Session.

These executives will have a very important role in supervisory governance as the proposal suggests that one of them, the Chair of the Executive Session, will be responsible for all the CCP Supervisory Colleges in the EU, which are currently the responsibility of the local competent authority where the CCP is registered. In addition, the other

two members of the Executive Session would have the ability to vote in the College together with a representative of the Competent National Authority. A representative of the EC and another from the Central Bank would attend the College as observers. The powers of the College will be the same as the current powers (authorisation of the CCP, approval and validation of risk management models, sharing of information in the event of removal of the licence and in emergency situations). Coordination between the Board of Supervisors of ESMA and the College would only occur in the event that the representative of the local Competent Authority did not agree with the College's decision and requested the mediation of the Board of Supervisors of ESMA. The supervisory Central Bank of the currency of the main products cleared in the CCP would have the power of veto, which it could exercise in the 15 days following the College's decision, which may be extended by five additional days as from the decision by ESMA, should the latter intervene.

It should also be pointed out that the EC proposes that ESMA should issue a report on the suitability of the establishment of a CCP in the EU for reasons of the impact on financial stability where the CCP clears significant volumes of contracts in an EU currency.

### **Change in the supervision and governance of the equivalence regime and recognition of CCPs in third countries**

The EC will continue determining, through its equivalence process, the non-EU jurisdictions that comply with EMIR requirements so that ESMA may recognise them as operative in the EU. However, the EC may include new equivalence requirements that should be specified in a Delegated Act. In turn, ESMA shall monitor supervisory and regulatory developments in the jurisdictions to which the EC has granted equivalent status in accordance with EMIR and it shall review the recognition of third-country CCPs once every two years, including an analysis of whether the arrangements with the supervisors of said CCPs have been effective, with the power to carry out, inter alia, on-site inspections. In addition, ESMA shall publish more details in its public register on registered third country CCPs.

However, the most significant proposal is the power of ESMA to classify third country CCPs that intend to offer services to EU entities into two types: non-systematically important (Tier 1) and systematically important (Tier 2). With this purpose, ESMA shall conduct an analysis of certain aspects such as the nature, size and complexity of the third country CCP's business, the effect that the failure of, or disruption to, the third-country CCP would have on critical EU markets and financial institutions, the clearing member structure and the relationship and interdependencies with other market infrastructures.

If ESMA considers that a CCP from a non-EU jurisdiction is Tier 2, ESMA shall require compliance with the following additional requirements for its recognition: a) ongoing compliance with EMIR prudential requirements; b) written confirmation that the CCP complies with any requirements imposed by the Central Bank of issue of any of the EU currencies using the products cleared by the CCP; c) undertaking by the CCP to submit to ESMA any documentation requested and to allow access to its offices where required; and d) compliance with the necessary procedures to fulfil letters a and c above.

However, given the global concentration of clearing services and the risk that this entails for the EU financial system, ESMA may determine and recommend to the EC, in agreement with the Central Bank of the relevant EU Member State according to the currency of the products, that the risk is of such magnitude that the CCP may not be recognised in the EU even in the event of full application of EMIR to said CCP. In this situation, the EC may require that said CCP should be established in an EU Member State in order to provide services in the EU.

### **Greater supervisory powers of ESMA and EU Central Banks in supervising third country CCPs**

As mentioned above, supervision of third country Tier 1 and Tier 2 CCPs will be performed by ESMA, which must have the consent of the Central Bank issuer of the currency of the contracts in each case cleared by the CCP in areas such as margin requirements, liquidity risk controls, collateral requirements and interoperability arrangements. The EC proposal grants relevant Central Banks the power to veto proposals by ESMA, which may only adopt them if they are in line with the amendments requested by said Central Banks.

### **Simplification of procedure for reporting transactions to CCPs in markets or by non-financial counterparties so they will not have to include hedging contracts for the purposes of calculating the threshold triggering the reporting of transactions to the CCP**

This improved definition of the transactions to be included by non-financial entities achieves the aim that EMIR requirements should fall on transactions which entail risk. Furthermore, certain counterparties which to date are

considered non-financial counterparties as they are included in a non-financial group will be included in the definition of financial counterparty if they reach a series of thresholds.

**Exemption for small Financial Institutions, which are not required to report OTC transactions to CCPs if their volume is below certain thresholds**

These Financial Institutions should start to submit their transactions to the CCPs once the exemption period granted to them in EC delegated acts has ended. In this regard, Pension Funds will have a temporary exemption for clearing transactions in CCPs until the CCPs, their clearing members and pension funds reach an agreement on technical solutions and measures to allow their access to CCPs.

Finally, it should be pointed out that the sanctioning regime for trade repositories has been made stricter. The proposal suggests multiplying by ten the amount of the current sanctions, i.e., the new monetary sanctions would rise from 20,000 euros to 200,000 euros (on average). The aim of this proposal is to increase the effectiveness of the sanctions and their deterrent effect so as to act as an incentive for the quality of the data and to ensure proportionality with the European regulatory framework (sanctions in other sectors).

**Links:**

[Communication from the Commission to the European Parliament, the Council and the European Central Bank. Responding to challenges for critical financial market infrastructures and further developing the Capital Markets Union](#)

[Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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 derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories](#)

[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](#)

[http://europa.eu/rapid/press-release\\_MEMO-17-1583\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-17-1583_en.htm?locale=en)