

Targeted consultation on the review of the central clearing framework in the EU

Fields marked with * are mandatory.

Introduction

Rationale for launching the targeted consultation

The aim of this consultation is to seek feedback on possible measures, legislative and/or non-legislative, to improve the competitiveness of EU CCPs and clearing activities as well as ensure that their risks are appropriately managed and supervised.

On 10 November 2021, Commissioner McGuinness announced an extension of the equivalence decision for the UK framework on central counterparties. This extension will allow the Commission to come forward later in 2022 with proposals 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
- **Strengthen supervision**: if the EU is to increase its capacity for central clearing, the risks resulting from an increased activity need to be appropriately managed. As such, there is a need to strengthen the EU's supervisory framework for CCPs, including a stronger role for EU-level supervision

Against this background, this consultation seeks stakeholders' views as to how to achieve these objectives. It builds on Commission reflections in several respects.

First, the need to **mitigate potential risks to EU financial stability**. As highlighted by the European Commission in the 19 January 2021 Communication "The European economic and financial system: fostering openness, strength and resilience", as well as in the 10 November statement by Commissioner McGuinness on the proposed way forward on central clearing, over-reliance on central counterparties (CCPs) located in the United Kingdom (UK) for some clearing activities is a source of financial stability risk in the medium term. As such, exposures to UK CCPs need to be reduced to mitigate these risks.

In this context, in January 2021 the Commission set up a working group including senior staff from the European Central Bank (ECB), the European Supervisory Authorities and the European Systemic Risk Board (ESRB) to explore the opportunities and challenges involved in transferring derivatives clearing from the UK to the EU. The discussions in the group confirmed the risks for the EU stemming from the exposures to UK CCPs. Such risks were also highlighted in the assessment of systemic third-country CCPs carried out by the European Securities and Markets Authority (ESMA)

under the framework of [EMIR 2.2](#) , which was finalised in December 2021. In preparation of the report, ESMA also consulted the ESRB and the central banks of issue.

While cooperation with third-country authorities where critical infrastructures are based will remain a key pillar of a sound supervisory approach, the extent of the exposures at hand requires EU institutions and stakeholders to work to reduce the level of risks, which can ultimately affect the stability of individual counterparts or even of the EU financial system.

Second, the need to **establish strong foundations on which to build the [capital markets union \(CMU\)](#)**, as set out in the [CMU action plan of September 2020](#) and in the [Communication from the Commission “Capital markets union - Delivering one year after the action plan” of November 2021](#). Efficient and competitive post-trade markets in general, and clearing in particular, will contribute to creating deeper, more liquid markets in the EU as post-trade infrastructures are the backbone of capital markets. A strong, competitive and integrated financial system is in turn the basis for a robust and vibrant economy. Thus, while remaining open to global financial markets, deep and liquid EU capital markets, underpinned by competitive and cost-efficient market infrastructures such as central counterparties, are key to reducing the EU’s overreliance on third-country providers for critical financial services. A more centralised approach to supervision is an integral part to these objectives, as it supports convergence and an EU-wide perspective. This was also highlighted in the [European Parliament Resolution on Further developing the CMU of October 2020](#).

Finally, the input received to this consultation will also contribute to an assessment of the current CCP supervisory framework, as provided for under Article 85(7) of the [European Market Infrastructure Regulation \(EMIR\)](#).

Background on the EMIR framework

In accordance with the [2009 G20 Pittsburgh agreement to reduce the systemic risk linked to the extensive use of Over-The-Counter \(OTC\) derivatives](#), the EU adopted EMIR in 2012. A key pillar of EMIR is the [requirement for standardised OTC derivatives contracts to be cleared through a CCP](#). Mandatory clearing for certain asset classes, as well as an increased voluntary use of central clearing amid growing awareness of its benefits among market participants, have led to a rapid growth of the volume of CCP activity since the adoption of EMIR – in the European Union (EU) and globally.

EMIR 2.2 was adopted in October 2019 and entered into force on 1 January 2020. It introduced new rules that enhanced the supervisory role of ESMA and EU central banks, mainly over third-country CCPs. This was considered necessary to address the growing concentration risks for the EU in third-country CCPs, in particular against the backdrop of the departure of the UK from the EU, which significantly increased the proportion of euro and other Union currency-denominated transactions cleared outside the EU. According to the Bank for International Settlements, as of 31 December 2020 the outstanding notional amount of OTC derivatives was about EUR 477 trillion worldwide, of which interest rate derivatives represented about 80% and foreign exchange derivatives almost 17%. More than 30% of all OTC derivatives are denominated in euro and other Union currencies. The market for central clearing of OTC derivatives is highly concentrated, in particular the market for central clearing of euro-denominated OTC interest rate derivatives, of which more than 90% are cleared in one single CCP established in the UK.

For EU CCPs, EMIR 2.2 introduced a more pan-European approach, where the CCP Supervisory Committee established within ESMA plays a key role bringing together in a single forum the different EU CCP national competent authorities, central banks and three independent members. It also strengthened the role of colleges of supervisors and central banks.

For third-country CCPs, EMIR 2.2 introduced a new system where CCPs are tiered depending on their systemic importance to the financial stability of the EU and its Member States. While non-systemic CCPs (**Tier 1 CCPs**) are allowed to provide services in the EU under the supervision of their home supervisors after being recognised by ESMA, systemically important CCPs (**Tier 2 CCPs**) have to comply with certain EMIR requirements and are supervised by ESMA. According to EMIR 2.2 ESMA, in agreement with the relevant central banks of issue and after consulting the ESRB, can conclude that a CCP or some of its clearing services are of such substantial systemic importance that the CCP should not be recognised to provide certain clearing services or activities. Based on its assessment, ESMA can

recommend that the European Commission adopt an implementing act confirming that that CCP should not be recognised to provide certain clearing services or activities, as compliance with the additional EMIR requirements would not be sufficient to safeguard the financial stability of the EU or one or more of its Member States.

On 28 September 2020 ESMA recognised three UK CCPs from 1 January 2021, with LME Clear Limited being assessed as a Tier 1 CCP and **ICE Clear Europe and LCH Limited as Tier 2 CCPs**. In December 2021 ESMA came to the conclusion that, although certain services provided by the two identified Tier 2 CCPs, LCH Ltd and ICE Clear Europe Ltd, are of a substantial systemic importance, the cost of not recognising these services would be too high compared to its benefits at this point in time. The services concerned relate to interest rate derivatives in euro and Polish zloty, as well as credit default swaps and short-term interest rate derivatives in euro.

Responding to this consultation

The purpose of this document is to consult all stakeholders on their views on possible measures, legislative and/or non-legislative, impacting on the framework applicable to CCPs both within and outside the Union as well as the framework applicable to market participants using the services of these CCPs, either directly as clearing members or indirectly as clients. The responses to this consultation will provide important guidance to the Commission services in preparing legal proposals where appropriate. The Commission acknowledges that not all questions are relevant to all stakeholders and invite respondents to reply to those questions that are most relevant to them.

Responses to this consultation are expected to be most useful where issues raised in response to the questions are supported with a clear and detailed narrative, evidenced by data (where possible) and qualitative evidence, and accompanied by specific suggestions for solutions to address them in the Regulation.

All interested stakeholders are invited to respond to the questions set out below.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-central-clearing-review@ec.europa.eu.

More information:

- [on this consultation](#)
- [on the consultation document](#)
- [equivalence derivatives and EMIR](#)
- [on the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian

- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Erica

* Surname

Brown

* Email (this won't be published)

erica.brown@nasdaq.com

* Organisation name

255 character(s) maximum

Nasdaq Clearing

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|--------------------------------------|--|-------------------------------------|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |

- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan

- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela

- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
- Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Field of activity or sector (if applicable)

- Accounting
- Auditing
- Banking
- Credit rating agencies
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable

The Commission will publish all contributions to this targeted consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') is always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* **Contribution publication privacy settings**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only the organisation type is published: The type of respondent that you responded to this consultation as, your field of activity and your contribution will be published as received. The name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the personal data protection provisions

General questions

Question 1. In the sections below, throughout this document, a range of possible options are presented which could support enhancing the attractiveness of clearing at EU CCPs, thus reducing reliance of EU participants on Tier 2 third-country CCPs, focussing on both the supply side and the demand side of clearing services. Please indicate which ones are the most effective in your view in contributing to the objectives:

	1 (very effective)	2 (rather effective)	3 (neutral)	4 (rather not effective)	5 (not effective)	Don't know - No opinion - Not applicable
Broadening the scope of clearing participants	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Broadening the scope of products cleared	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Higher capital requirements in <u>CRR</u> for exposures to Tier 2 CCPs	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exposure reduction targets toward specific Tier 2 CCPs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Macroprudential tools	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation to clear in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Active account with an EU CCP	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Hedge accounting rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Use of post-trade risk reduction services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms for clearing services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Measures to expand the services by EU CCPs	<input checked="" type="radio"/>	<input type="radio"/>							
Payment and settlement arrangements for central clearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Segregated default funds	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enhancing funding and liquidity management conditions	<input checked="" type="radio"/>	<input type="radio"/>							
Interoperability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>							

Question 7. Should the thresholds for the clearing obligation continue to be linked to the application of margin requirements?

- Yes
- No
- Don't know / no opinion / not applicable

Question 7.1 Please explain your answer to question 7 providing, where possible, quantitative evidence and examples including on potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

II. Measures towards market participants

a) Capital requirements in CRR and supervisory tools

EMIR was amended in recent years to incorporate a new framework for third-country CCPs. The new framework acknowledges that there are differences among third-country CCPs in terms of their systemic importance to the EU and its Member States. CCPs which are classified as 'Tier 1' are not of systemic importance, while CCPs which are 'Tier 2' are of systemic importance. The framework also envisages, as a measure of last resort, that a third-country CCP or some of its clearing services could not be recognised by ESMA as they are of substantial systemic importance to the financial stability of the EU or of one or more of its Member States and this cannot be mitigated by complying with the requirements applicable to Tier 2 CCPs. The CRR provides for the prudential treatment of banks' exposures to CCPs. The CRR distinguishes between CCPs which are authorised or recognised in the EU ('qualifying CCPs') and CCPs which are not ('non-qualifying CCPs'). Exposures to the former benefit from preferential capital treatment. Capital requirements can be an incentive to influence banks' behaviour, to complement banks' own efforts to reduce exposures.

Question 1. EMIR 2.2 introduced a difference between third-country CCPs which are Tier 1 and those that are Tier 2.

How could the greater systemic importance (and associated risks) of Tier 2 third-country CCPs be reflected in the context of banking rules and supervision?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would propose that EU members should be incentivized to clear products in EU currencies with EU CCPs, by benefiting from preferential capital treatment, also compared to recognised third-country CCPs, including both Tier 1 and Tier 2 CCPs, as these are not incorporated in the EU and can be seen as posing a higher risk to the financial stability of the EU in a crisis situation.

Question 2. What changes in the legal framework could translate in banks increasing their clearing activities in EU CCPs?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Amend CRR to increase capital charges for banks clearing products in EU currencies with third-country CCPs. The risk weight according to CRR should be the factor determining the capital charge.

Question 2.1 Please explain your response to answer Question 2, providing where possible quantitative evidence or examples, including on potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 3. How could a higher risk weight for excessive exposures to a Tier 2 CCP be designed given their systemic imprint?

	1 (strongly agree)	2 (rather agree)	3 (neutral)	4 (rather disagree)	5 (strongly disagree)	Don't know - No opinion - Not applicable
A higher risk weight for the portion of the exposure which is above a certain threshold	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A higher risk weight for the overall exposure to the CCP concerned	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A higher risk weight if there is evidence that no meaningful efforts are made to reduce the exposure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 3.1 Please explain your answer to question 3 providing, where possible quantitative evidence and examples, including on potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4. In light of the Commission strategy to reduce excessive reliance on Tier 2 third-country CCPs, what level could be appropriate in your view for the risk weight, to incentivise clearing members to consider other options than a Tier 2 CCP for clearing their derivatives?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would propose increasing capital charges in steps. This will create increased cost for members that do not transfer their clearing to EU CCPs but the cost increase is implemented over time and will only be significant if no volumes are transferred at all. A stepwise approach will also ensure that EU CCPs can handle member onboarding and increased volumes in a controlled way. For example, the capital charge could be 3% year 1, 4% year 2 and 5% year 3.

Question 5. How do you assess the risk that participants would relocate clearing to other third-country jurisdictions in case a higher capital requirement on excessive exposures to T2 CCPs is imposed?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If the capital charge is applied to all third-country CCPs this would not be an issue. If not, we believe that liquidity in the targeted OTC products is already split between LCH and a few EU CCPs and will naturally shift to these EU CCPs.

Question 6. Do you include in your operational risk framework scenarios including limitation of access/non-recognition of a third-country CCP, or activation of the EMIR 2.2 process under Article 25.2c (i.e. possibility of de-recognition of a third-country CCP or certain clearing services)?

- Yes
- No

- Don't know / no opinion / not applicable

Question 7. When would you consider that a clearing member's exposure (initial margin and default fund contributions) to a CCP be "excessive"?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8. Could you provide information as to the way the clearing location interplays with the booking location in your case?

What are the considerations which influence/would influence your choices in this regard? Please explain:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

b) Macroprudential tools

Question 1. The over-reliance on Tier 2 CCPs presents risks for the financial stability of the Union.

Do you think macroprudential tools should be considered to achieve the desired policy objectives, alongside or as a substitute for the use of microprudential tools?

- Yes
- No
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 in as much detail as possible:

5000 character(s) maximum

Question 5. What are in your view/experience the difficulties around legacy portfolio transfers?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

f) Obligation to clear in EU

EMIR 2.2 introduces a new category of third-country CCPs, 'Tier 2 CCPs'. Those CCPs are deemed systemically important to the financial stability of the Union or of its Member States. One could argue that adding more risk to those CCPs is by definition something that should be avoided. Currently Article 5 of EMIR states that the clearing obligation should be fulfilled through authorised EU CCPs or recognised third-country CCPs. Some stakeholders have suggested that a requirement should be imposed on EU participants to fulfil the clearing obligation only at EU CCPs and/or Tier 1 third-country CCPs. While such a requirement could be effective in promoting clearing at EU CCPs, it may also restrict market choice.

Question 1. In your view should Article 5 be amended?

- Yes, so that for new contracts the clearing obligation can only be fulfilled through authorised EU CCPs and/or recognised 'Tier 1 CCPs'
- No
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

g) Active account

In order to foster an increased usage of EU CCPs, market participants have showed an interest in the idea of maintaining an active account with an EU CCP for the products that are available inside and outside the EU.

Question 1. How would you define an active account?

Please explain your answer providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

All market participants should have a choice of CCP for clearing OTC derivatives, with access to a CCP in the jurisdiction of the respective currency being traded, if such a CCP exists. By implementing a requirement of “active account” in the EU, clearing banks will be incentivized to provide such choice of access for their clients.

We would propose that any EU participant, clearing products subject to the clearing mandate, should have access to, and actively clear a certain portion of new trades in those products, with an EU CCP. We would propose that the EU participant should always have an account with the CCP in the jurisdiction of the respective currency being traded, if such a CCP exists. The rationale for this is the same as that argued by EU regulators regarding EUR IRS, i.e. the importance of clearing a substantial portion of the respective IRS market in the jurisdiction of the central bank, to enable control over the currency and possible support to the market, in a crisis situation, as well as focus on the local currency from local regulators in such a situation.

The participant should be able to demonstrate that the account is being used actively or give a credible explanation as to why there has been no activity during the period. If there is no volume requirement there is a risk that a number of “empty” accounts are set up with a single CCP, just to be compliant, and if subsequently volume requirements are introduced, it is more likely that volumes may be concentrated into this one single CCP.

Question 2. Should the level of activity be quantified?

- Yes, on annual basis
- Yes, more frequently than on an annual basis
- No
- Other
- Don't know / no opinion / not applicable

Question 2.1 Please explain your answer to question 2 providing, where possible, quantitative evidence and examples, including on potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We advocate introducing sufficient measures in order to achieve a gradual shift of volumes over time and avoiding measures that require efforts on behalf of market participants, without significantly contributing to this goal. Annual confirmation of the use of the “active account” should be sufficient to this end.

Question 3. Should the set level of activity evolve overtime, and based on what criteria?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, we propose that the minimum level of activity could be increased over time, starting with a low proportion of the participant’s new trades in a particular product, and increasing over time, to avoid unnecessary costs to market participants.

Question 4. How would an active account work for omnibus client accounts?

Please explain your answer providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5. How can client clearing service providers ensure that clients maintain an activity in EU CCPs?

Please explain your answer providing, where possible, quantitative evidence or examples, including on potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6. What would be the pros and cons, the costs and benefits of imposing an obligation to open an active account and setting a regulatory level of activity in it?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Today, some buy-side firms have limitations in their choice as to where they clear, as the major international GCMs do not always offer clearing with the local CCP.

A concentration of the fixed income market to one major international CCP leads to a market in a local currency that is less resilient towards severe financial disturbances. In such a scenario, one single CCP and one central bank would be in the driver seat when dealing with a financial crisis in a local currency, risking increased spillover effects to other currencies handled by the same CCP and central bank, where focus will likely be on the largest currency.

A preferred structure would be a well-balanced split of volumes between two CCPs, for each currency, where one of the CCPs is located in the jurisdiction of the respective currency. In the event of disturbances in one CCP, the other CCP can continue to service the market. In addition, local participants are more likely to support the functioning of the local market in the event of severe financial turmoil as there is a closer link with the participants' business models.

If an obligation is not imposed, it is not realistic to expect all market participants to voluntarily open up accounts with EU CCPs. There is a risk that market participants bet that this will not be needed in the end, and don't make the necessary preparations.

Question 7. In your view, would it be useful to impose requirements (e.g. having an active account at an EU CCP) on international banks having a subsidiary in the EU for retail activities?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 7:

5000 character(s) maximum

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Not necessarily, retail banking is in general not as risky and does not usually involve house trading with open positions.

h) Hedge accounting

Question 1. Should the provision of client clearing services be further regulated so that clients are consistently offered the option to clear also at one EU CCP or incentivised to do so?

- Yes
- No
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence and examples:

5000 character(s) maximum

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III. Measures towards CCPs

a) Measures to expand the offer by EU CCPs

Market participants and CCPs have expressed concerns that the time needed for an EU CCP to expand its product offering or make changes to its risk models, e.g. to accommodate for new products or currencies, is too long and hampers their capacity to compete internationally.

Question 1. How are EU CCPs impeded or slowed down, compared to their international peers, in bringing new products to clearing?

In which ways could EU CCPs be supported in expanding their range of clearing services?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EU CCPs are currently subject to an approvals process, when introducing new products, that is often lengthy and involves multiple layers of approvals and multiple authorities are involved in the validation and review of the changes. The process can take anything from 6 months to several years and puts EU CCPs at a disadvantage compared to international peers.

We would urge regulators to simplify the approvals process under article 15&49, with the aim of significantly reducing the time needed to obtain approvals for new products and services, as well as risk model changes.

We would propose that a single authority should be able to a) determine whether a change should be deemed significant, and b) approve most changes.

The statutory deadlines in EMIR are 6 months for extension of services and 90 working days for risk model changes. However, these deadlines only apply to applications that are deemed complete. The timeline from sending in an application to receiving a positive completeness assessment is unregulated and can be anything from one month to several years. We suggest to include a fixed timeline for completeness assessments in EMIR to achieve a faster approval process.

Question 2. Would it be appropriate to envisage a faster approval process for certain types of initiatives which could support the objective of promoting clearing in the EU, such as expanding the range of currencies cleared? What would be the pros and cons of a quicker approval process?

What other activities/services could be considered?

Please explain:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes, the approvals process could be faster for certain types of initiatives, not limited to expanding the range of currencies cleared. A number of changes could be dealt with by a single authority and the process would thereby be made significantly shorter. For CCPs that are authorized in the EU and duly supervised, a faster approval for certain changes should be promoted.

We propose that ESMA should receive a mandate, in Level I, to specify the content of an application for article 15/49. Greater certainty around the content will make it easier to prepare applications that meet expectations and lead to faster approval processes.

Other activities/services that could be considered for a faster approval process to promote clearing in the EU include asset class expansion, product approvals within an existing asset class and adjacent services such as collateral management.

Question 3. Could in your view significant changes to models and parameters (Art. 49 EMIR) as well as approval of extension of activities (Art. 15 EMIR) be handled at the EU level only?

For example, could ESMA be involved at an earlier stage?

What other avenues would you consider to accelerate the procedures?

5000 character(s) maximum

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One solution could be to let a single authority determine whether a proposed change should be deemed significant and that authority could potentially approve these changes, possibly allowing a non-objection

period for other relevant authorities. We would also propose clear timelines for all steps in the approvals process, where EMIR currently provides timelines for part of the process.

We note that college opinions are issued at least a month after decisions in the CCP Supervisory Committee /ESMA. Since the participation in colleges and ESMA CCPSC are to a large extent overlapping, these processes could be coordinated, for example by letting college participants take part in the CCP Supervisory Committee discussions and vote on their opinion at the same time.

Question 4. How could an ex-post approval process for extension of services, similar to other jurisdictions, be designed in your view, so as to balance the need for a smooth process and for ensuring adequate supervisory checks and control of risks?

5000 character(s) maximum

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We are generally in favour of ex-post approvals for certain changes, provided the process can be simplified and made faster than we have experienced so far.

Express approvals (approval for implementation prior to validations by NCA and ESMA) are currently available as an option. However, even the decision to determine whether a change is eligible for express approval can take months, and as such is not an efficient solution today. The ex-post approval validations are also very lengthy and can take years afterwards.

A potential solution could be for a single authority to decide whether the change is significant or not, and criteria need to be streamlined. Lack of clarity in the criteria and multiple stakeholders involved lead to a very lengthy decision process, also for the current express approvals process.

Question 5. If the criteria for extension of authorisation and significant changes to models and parameters were to be introduced in the level 1 (i.e. in EMIR), so as to be objective and clear for everybody, what could the criteria be?

5000 character(s) maximum

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Currently there are guidelines, in the form of an ESMA opinion, but we do not believe they are followed in a similar way among member states, possibly due to lack of clarity, leading to an un-level playing field.

We think the mandate to ESMA introduced in Emir 2.2, to clarify the criteria, is the right approach to allow for greater flexibility to fine-tune the approach if needed, rather than having hardwired criteria at Level 1. That said, the ESMA proposal under the current mandate introduces too much discretion and criteria that will increase the number of changes that are captured by these processes compared with the current ESMA opinion. As a result, there is a need to change the mandate to ESMA in Level 1, to achieve an outcome with predictable, objective and clear criteria that limits pre-approval processes to truly significant changes from a financial stability perspective.

b) Payment/settlement arrangements for central clearing

Question 1.1 Please explain your reply to question 1, also assessing the costs related to such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 2. If EMIR or other pieces of EU legislation (e.g. the CRR) were to incentivise the establishment of segregated default funds by CCPs, how could that be achieved?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 3. In your view, could a segregated default fund be established for interest rate swap/interest rate derivatives clearing only?

Would that be attractive?

What could be the costs and benefits of such an approach?

5000 character(s) maximum

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d) Enhancing funding and liquidity management conditions

EU CCPs can use a range of options for their liquidity management, investment purposes and custody/collateral management, with many options available to them in the EU.

Question 1. Is the current range of options for funding, liquidity, collateral safekeeping/management, investment sufficient to support the growth of EU-based clearing?

- Yes
- No
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing examples and, where possible and relevant, quantitative evidence:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Central bank access

We would like to propose to the EU Commission to consider a more standardized, and increased, access to central bank deposits and liquidity within the EU. According to a survey conducted by the European Association of Clearing Houses (EACH) in 2021, there is not a common level of access among European CCPs. Moreover, for those CCPs with lower level of access, our view is that this could, in the end, have a negative impact on financial stability in a situation of extreme market stress.

We would especially like to emphasize the benefits to the financial system of CCPs having access to central bank liquidity, including overnight liquidity. This tool would be especially important in a liquidity crisis situation, where it would be key to have an ex-ante commitment from the central bank, to ensure maximum credibility for the CCP and avoid uncertainty in a stressed situation.

Currently, some CCPs rely on commercial banks for liquidity, and these are often also clearing members of the CCP, and may be key participants in a concentrated banking sector. Some CCPs use non-local banks but cut-off times may be much earlier for such banks, leading to reduced access to liquidity in a sudden crisis situation. In addition, in a worst case scenario, credit lines with commercial banks may not be honored, resulting in further instability.

We would propose that CCPs be given access to a standing central bank facility, subject to providing eligible collateral in accordance with the central bank's rules. This would be in line with access provided by some central banks outside the EU. This facility would only be used in a crisis situation, and not in day-to-day operations of the CCP.

Increased eligible list for CCP investments

We would like to propose to the EU Commission that the list of eligible assets for the investment of CCP funds is expanded, specifically to include covered bonds. We, as well as EACH, have made this recommendation also in the ESMA consultation on the investment policy of central counterparties (January 2022).

Please note that the covered bonds we refer to are secured by a pool of mortgage credits and/or public sector credits issued by an entity granted a special license from the NCA.

In the EUR currency area, there may not be an issue with limiting CCPs' investments to Government Bonds, where there is a large amount of outstanding debt. But in markets with local currencies, such as SEK and

NOK, the market for government securities can be more limited.

According to EMIR, CCPs can accept covered bonds as eligible collateral. Covered bonds are also considered to be High-Quality Liquid Assets in the Liquidity Coverage Ratio calculations, under the Capital Requirements Regulation (CRR). We would propose alignment of the EMIR rules on CCP investments.

Regarding the possible conditions to consider expanding the list of eligible instruments to debt instruments issued or backed by private entities, investments in covered bonds could be subject to concentration limits and also be subject to haircuts in the calculations of CCP's liquid resources (EMIR Art 44, RTS chapter VIII, articles 32-34), i.e. covered bonds considered as highly liquid financial instruments in relation to investments would be treated similar to highly liquid eligible collateral.

Question 2. What enhancements to the existing options could be envisaged, and what would be the rationale?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

e) Interoperability

Interoperability arrangements contribute to market integration, market liquidity and can lower the cost of clearing for market participants. Under EMIR, explicit provisions for interoperability links concern the case of transferable securities and money market instruments.

Question 1. Do you think EMIR should explicitly cover interoperability arrangements for derivatives?

- Yes
- No
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 1 providing, where possible, quantitative evidence and examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

f) Other measures

Question 1. Are there other measures which could potentially help improve the competitiveness of EU CCPs both in terms of the products they offer and the services they provide?

- Yes
- No
- Don't know / no opinion / not applicable

Question 1.1 Please explain your answer to question 2 and provide supporting evidence of the potential costs and benefits:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Pending details to be defined, we would like to express our support for expanding the range of eligible collateral for participants in the energy clearing sector, as expressed in the EACH response to this consultation.

IV. Monitoring progress towards reduced reliance of EU participants on Tier 2 CCPs

An appropriate monitoring process could enable to measure the progress made by EU market participants towards a reduction of exposures to Tier2 CCPs. In this context, it would be important to be able to establish a risk picture as complete as possible in order to have a broad enough overview of exposures to Tier 2 CCPs, of how they are reduced overtime and potentially transferred to the EU, while limiting the burden for EU market participants that such regular data collection would entail.

The data collection exercise would be particularly useful with respect to the services identified by ESMA ([ESMA Assessment Report under Art. 25\(2c\) EMIR](#)) as being of a substantial systemic importance

- Swapclear by LCH Ltd, for both Euro and Polish Zloty-denominated products
- The STIR futures by ICE Clear EU for euro-denominated products
- The CDS Service by ICE Clear EU for euro-denominated products

Question 1. Which EU market participants should be primarily targeted in a central data collection exercise to ensure a risk picture as complete as possible?

- It would be sufficient to focus on EU clearing members