

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 counterparties 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

Francois

* Surname

BARATTE

* Email (this won't be published)

francois.baratte@alfi.lu

* Organisation name

255 character(s) maximum

Association of the Luxembourg Fund Industry

* 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.

6182372280-83

* 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 checked="" 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 checked="" 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 checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Higher capital requirements in CRR for exposures to Tier 2 CCPs | <input type="radio"/> | <input type="radio"/> | <input checked="" 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 checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Macroprudential tools | <input type="radio"/> | <input type="radio"/> | <input checked="" 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 checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Active account with an EU CCP | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Hedge accounting rules | <input type="radio"/> | <input checked="" 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 checked="" 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 checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Measures to expand the services by EU CCPs | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Payment and settlement arrangements for central clearing | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Segregated default funds | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Enhancing funding and liquidity management conditions | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Interoperability | <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 checked="" type="radio"/> |

Question 1.1 Please explain your response to Q1, setting out the reasons and providing an assessment of costs and benefits of each option.

In your answers please also take into account costs and benefits for the real economy:

5000 character(s) maximum

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

We are happy to contemplate a revisited Clearing framework in light of the European Commission's agenda. Nevertheless, the key decision driver to choose a CCP, in the EU, in the UK or even overseas will always remain competitiveness, based in particular on service prices, regulatory obligations (e.g., reporting), and risks aspects. Sufficient liquidity is also an item for consideration, but as a side stake as intrinsically linked to service pricing and venue competitiveness.

Moreover, a redistribution of roles between different industry players should not lead to a verticalization of offers within a given entity that would have a dominant position and would keep its client captive with a verticalization of offers (i.e., trading, market data, collateral agent, Issuer CSD, Investor CSD, buy-in agent, CCP).

Counterparties eligible to clearing want to continue to benefit from a broad range of choices, with an interoperable and modular offer all along the trading/post trading chain.

I. Scope of clearing participants and products cleared

The discussions that took place in 2021 in the working group set up by the Commission as well as in ad hoc outreach meetings with market participants showed that one way to enhance the attractiveness of EU CCPs could be to widen the scope of clearing members and clients accessing CCPs as well as the products offered for clearing or required to be cleared. Under appropriate conditions, broadening the clearing obligation can bring benefits in terms of financial stability.

Article 1 EMIR currently defines the list of entities subject to its requirements. A number of entities such as central banks and debt management offices are excluded from the scope of EMIR. Article 89 also temporarily exempts Pension Scheme Arrangements ('PSAs') from the clearing obligation. This exemption will come to an end in June 2023 at the latest (Pursuant to Article 85(2) EMIR, the end date of the exemption laid down in Article 89(1) EMIR may be extended twice, each time by one year), after which PSAs will be required to clear.

In terms of products, point 7 of Article 2 EMIR gives a definition of the term OTC derivatives that is further on used throughout the text in particular in Articles 4 and 5 where the clearing obligation and the clearing obligation procedure are framed, delegating the task of defining the range of products subject to a clearing obligation to the European Commission, based on a draft to be developed by ESMA.

In order to enhance the liquidity in EU CCPs, which is perceived as a key factor by market participants, it is asked which additional products and entities could be subject to a clearing obligation and under what conditions, if any. The financial stability angle should also be kept in mind when answering to these questions. It should also be considered which potential measures could encourage PSAs to clear their transactions at EU CCPs (In a [public letter to Commissioner McGuinness dated 19 October 2021, Pensions Europe](#) indicated that "PSAs are willing to continue actively reducing their exposures to UK CCPs, and open and hold active accounts within the EU based CCPs").

Entities (such as funds) which have a similar profile to PSAs are also welcome to respond to the questions below.

a) Clearing obligation for PSAs

PSAs under EMIR are subject to a temporary exemption from the central clearing obligation. The Commission extended the exemption until June 2022 ([Commission Delegated Regulation \(EU\) 2021/962 of 6 May 2021](#)). The objective of this section is to gather further insights into potential initiatives which could make it easier for PSAs to clear their transactions at EU CCPs.

Question 1. What measures (legislative or non-legislative) do you think would be useful in order to make clearing in the EU more attractive for PSAs?

5000 character(s) maximum

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

Question 2. How could the current offer by EU CCPs, including the direct /sponsored access models which were designed to also specifically address central clearing issues for PSAs, be further improved and/or facilitated?

5000 character(s) maximum

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

Question 3. (For CCPs) Can you provide information as to the number of EU PSAs on-boarded over the last year?

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

Question 4. (For clearing members) Have you considered becoming a sponsor/clearing agent for a PSA or other buy-side entities in a direct /sponsored access model offered at EU CCPs?

- Yes
- No

- Don't know / no opinion / not applicable

Please explain the reasons your answer to question 4:

5000 character(s) maximum

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

Question 4.1 What are the advantages of the model from a clearing member perspective?

5000 character(s) maximum

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

Question 4.2 What are the features of the model which could be further improved from a clearing member perspective?

5000 character(s) maximum

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

Question 5. (For banks/clearing members) How could your capacity to offer collateral transformation services to PSAs be improved? Have you identified any barriers or regulatory elements that would need to be improved to facilitate such offer?

5000 character(s) maximum

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

Question 6. (For PSAs) Do you currently actively clear derivatives at more than one CCP?

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

Question 7. According to your estimation, what amount of Union currency-denominated OTC derivatives will be brought to clearing once PSAs become subject to the clearing obligation?

What amounts could be brought to clearing in the EU?

Please provide figures per EU currency if possible:

5000 character(s) maximum

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

b) More clearing by private entities that do not access CCPs directly

The clearing obligation under EMIR applies to a broad range of entities, including insurance companies, real economy firms (corporates, energy firms) and investment funds, most of which access the services of CCPs through a clearing member. The aim of this section is to gather a better understanding of the clearing activity of such entities and explore possible initiatives to encourage them to clear in EU CCPs.

The questions in this section are meant to be answered by all types of clearing participants, unless otherwise specified. **In the case of asset managers, they are requested to distinguish in their answers between Undertakings for Collective Investment in Transferable Securities (UCITS), Alternative Investment Funds (AIFs) and Money Market Funds (MMFs).**

Question 1. How do you usually approach a CCP for clearing your cash, derivatives and/or repo contracts?

Please select as many answers as you like

- As a client of a clearing member (directly or indirectly)
- Through a direct/sponsored access model
- Other

Question 2. Please describe your derivatives portfolio, providing both qualitative and quantitative information:

- **interest rate derivatives**
- **credit derivatives**
- **foreign exchange derivatives**
- **equity derivatives**
- **commodity derivatives**
- **others**

Please describe in detail, specifying whether the derivatives are exchange traded or OTC.

5000 character(s) maximum

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

Question 2.1. Please provide information on the overall nominal/notional amounts and relative amounts of your derivatives, differentiating by type of derivative and by currency of denomination if possible:

5000 character(s) maximum

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

Question 3. Do you currently clear at a CCP only derivatives subject to the clearing obligation under EMIR or also other types of derivatives?

- Only derivatives subject to the clearing obligation under EMIR
- Both derivatives subject to the clearing obligation under EMIR and other derivatives
- Other
- Don't know / no opinion / not applicable

Question 3.2 If you also clear other OTC derivatives (i.e. not subject to the clearing obligation under EMIR or within the scope of MiFIR article 29), please explain which ones and provide information/data as to the notional amounts .

Please provide, where possible, this information per type of “other derivative”:

5000 character(s) maximum

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

Question 4. If you do not currently clear other OTC derivatives at a CCP, are you considering/would you consider approaching a CCP to clear them?

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

Question 4.1 What are the considerations that drive/would drive your decision ?

Please explain 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.

Question 5. How would you describe your client clearing relationship with a clearing member:

| | Yes | No | Don't know - No opinion - Not applicable |
|---|-----------------------|-----------------------|--|
| a) in terms of offer of client clearing services, is it easy for you to find a clearing member to access a CCP? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| b) Is it expensive? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| c) is it/would it be more difficult/expensive for you to find a clearing member to access an EU CCP? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 5.1 Please explain your response to question 5 and provide, where possible, quantitative evidence and examples, including where possible an estimate of the costs under Q5 b) and c):

5000 character(s) maximum

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

Question 6. Do you select where to clear or do you rely on the advice of your clearing member?

- I select where to clear
- I rely on the advice of my clearing member
- Don't know / no opinion / not applicable

Question 7. (particularly for insurers) Do you think improvements are necessary in the regulatory framework (e.g. Solvency II/delegated regulations, etc.) to incentivise clearing at a CCP?

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

Question 8. Are you a direct member at a CCP in a direct/sponsored access model?

- Yes
- No
- No, but I am considering it
- Don't know / no opinion / not applicable

Question 8.1 Please explain the key in influencing your choice 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.

Question 8.2 (for insurers applying the Solvency II standard formula) In relation to question 8.1, are capital requirements related to derivatives exposures a key/important factor affecting your choice?

5000 character(s) maximum

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

Question 9. How do you consider the offer of direct/sponsored access models in the EU relative to what is offered in other third countries?

Please explain you answer 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.

Question 10. Are there any regulatory incentives that could facilitate the use of such models by yourself?

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

Question 10.1 Please explain your answer to question 10, providing, where possible, quantitative evidence and examples including on the potential costs and benefits:

5000 character(s) maximum

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

Question 11. Do you think further incentives to facilitate client clearing should be introduced?

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

Question 12. Collateral transformation services provided by banks are often used by clients to meet liquidity needs related to margin calls. How do you consider the treatment of repos/reverse repos under the [Capital](#)

[Requirements Regulation](#): do you think there is room for better encouraging banks to provide collateral transformation services to their clients which clear in the EU?

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

Question 13. How could EMIR or other legal texts be amended so that direct access to CCPs is facilitated so that smaller banks or end users are less dependent on the limited number of client clearing service providers?

5000 character(s) maximum

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

Question 14: Is there a need to adjust the trading rules to make it more attractive for private entities to trade on trading venues with central clearing arrangements?

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

Please explain your answer to question 14:

5000 character(s) maximum

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

Question 15: Is there a need to amend/recalibrate UCITS counterparty exposure limits (Articles 50(1)(g) (iii) and 52 and of Directive 2009/65/EC) to distinguish cleared versus non-cleared, cleared at a Tier 2 versus other CCPs?

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

c) Encourage clearing by public entities

In the context of building domestic capacity and incentivising an expansion of central clearing activities in the EU, an issue identified relates to a lack of liquidity in EU-based CCPs and the possible role for public entities in addressing this problem. Market participants have suggested that the participation of national and supranational public bodies (e.g. multilateral banks, public banks managing state participations, debt management offices, central banks, other bodies) in EU-based CCPs could increase the liquidity pool available in those CCPs. The following questions aim at gaining a better understanding on how to achieve this goal.

Question 1. To what extent do you think that the participation of public entities would add to the attractiveness of central clearing in the EU?

5000 character(s) maximum

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

Question 2.1 What are the benefits of public entities to centrally clear?

5000 character(s) maximum

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

The benefits of this measure are unknown / difficult to quantify in terms of incoming clearing volumes. The implementation of clearing functions would represent a hurdle for public entities who do not have the resources for clearing. Such scenario would also create substantial additional costs to be eventually covered by tax payers' money.

Question 2.2 What are the costs and other drawbacks of public entities to centrally clear?

5000 character(s) maximum

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

Question 3. What would make it more attractive for public entities (as referred to in Article 1(4) and Article 1(5) EMIR) to centrally clear?

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

5000 character(s) maximum

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

Question 3.1 Starting from which volumes would it be attractive for public entities to consider to centrally clear?

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

5000 character(s) maximum

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

Question 3.2 Do you see any opportunities to facilitate central clearing for public entities with small clearable volume?

Please explain your answer providing, where possible, quantitative evidence and examples, including on the 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. for public entities: Are you a public sector entity (under point (8) of Article 4 (1) CRR) active in OTC Derivatives, Exchange Traded Derivatives, Securities Financing Transactions or other transactions that could be centrally cleared?

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

Question 4. for multilateral development banks: Are you a multilateral development bank under Art. 117 CRR active in OTC Derivatives, Exchange Traded Derivatives, Securities Financing Transactions or other transactions that could be centrally cleared?

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

Question 4. for Member States' public authorities: Are public sector entities in your jurisdiction active in OTC Derivatives, Exchange Traded Derivatives, Securities Financing Transactions or other transactions that could be centrally cleared?

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

Question 4. for central banks: Are you a central bank active in OTC Derivatives, Exchange Traded Derivatives, Securities Financing Transactions or other transactions that could be centrally cleared?

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

Question 4. for CCPs: Do you clear for public sector entities active in OTC Derivatives, Exchange Traded Derivatives, Securities Financing Transactions or other transactions that could be centrally cleared?

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

Question 5. Do these public entities / do you already voluntarily clear some or all of these transactions via a CCP?

- Yes, **all** of these transactions
- Yes, **some** of these transactions
- No
- Don't know / no opinion / not applicable

Question 6. Which CCP/CCPs do they/you use or would they/you consider using to clear these transactions?

5000 character(s) maximum

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

Question 6.1 If you would not consider clearing these transactions in EU CCPs, please explain the reasons:

5000 character(s) maximum

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

Question 7. In case they/you already clear in a third-country CCP, would they /you be willing to switch to EU-based CCPs, where possible?

- Yes
- No

- Don't know / no opinion / not applicable

Question 8. Would those public entities not accessing a CCP for some or all of their transactions / you consider voluntarily doing so in the future?

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

Question 9. Do those public entities which access CCPs for some or all of their transactions / you, do so:

- directly
- as a client of a general clearing member
- through indirect clearing arrangements
- don't know / no opinion / not applicable

Question 10.1 Where these public entities / you are a clearing member of CCPs, do they/you post initial and/or variation margin?

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

Please explain your answer to question 10.1 providing further quantitative and qualitative information:

5000 character(s) maximum

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

Question 10.2 Where these public entities / you are a clearing member of CCPs, do they/you contribute to the CCP's default fund or any recovery or resolution measures?

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

Please explain your answer to question 10.2 providing further quantitative and qualitative information:

5000 character(s) maximum

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

Question 10.3 Where these public entities / you are a clearing member of CCPs, do they/you use any form of a sponsored model to fulfil their/your obligations vis-a-vis the CCP?

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

Please explain your answer to question 10.3 providing further quantitative and qualitative information:

5000 character(s) maximum

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

Question 10.4 Where these public entities / you are a clearing member of CCPs, does the CCP's rulebook contain any specific provisions regarding the participation of these entities?

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

Please explain your answer to question 10.4 providing further quantitative and qualitative information:

5000 character(s) maximum

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

Question 11.1 Where these public entities access CCPs through a general clearing member, is that clearing member:

- another public entity
- a profit oriented entity
- other
- don't know / no opinion / not applicable

Please specify to what other type(s) of entity you refer in your answer to question 11.1:

5000 character(s) maximum

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

Question 11.2 Where these public entities access CCPs through a general clearing member, do the contractual arrangements of the CCP, the general clearing member and the public entity contain special provisions reflecting the public entity's status?

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

Question 12. Have you encountered any issues regarding the post-trade reporting of transactions to which public entities are counterparties?

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

Question 13. Should there be a differentiation between types of public entities?

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

Please explain your answer to question 13, 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.

Question 14. Are there characteristics of different types of public entities that require specific considerations in your opinion?

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

Please explain your answer to question 14 and mention – where appropriate – the Member State concerned:

5000 character(s) maximum

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

Question 15. Which public entities should centrally clear in your opinion? Why?

5000 character(s) maximum

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

Question 16. The determination of which public entities should centrally clear should be linked to:

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|---|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--|
| The type of public entity (i.e. multilateral development banks, public banks managing state participations, debt management offices, central banks, other public (sector) entities) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The assessment /rating of the public entity | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The size of the public entity | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The mission of the public entity | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The ownership structure of the public entity (fully owned by a public owner? (Partially) private investors ok) | <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 16.1 Please explain your answer to question 16 providing, where possible, quantitative evidence and examples including on the potential costs and benefits:

5000 character(s) maximum

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

Question 17. Which public entities should not centrally clear in your opinion? Why?

5000 character(s) maximum

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

Question 18. Which type of central clearing do you consider most suited for public entities?

- directly
- as a client of a general clearing member
- through indirect clearing arrangements
- don't know / no opinion / not applicable

Question 18.1 Please explain your answer to question 18 providing, where possible, quantitative evidence and examples, including on the potential costs and benefits:

5000 character(s) maximum

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

Question 19. Which type of transactions should be centrally cleared by public entities in your opinion? Why?

5000 character(s) maximum

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

Question 20. Which type of transactions should not be centrally cleared by public entities in your opinion? Why?

5000 character(s) maximum

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

Question 21. What are the reasons not to centrally clear for those public entities that are active in OTC Derivatives, Securities Financing Transactions or other transactions that could be centrally cleared?

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|---|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--|
| Too small/not enough transactions for central clearing (costs too high per transaction) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| No in-house expertise in the field/not enough volume in order to employ staff with expertise (too expensive) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Reporting costs too high | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| On-boarding costs too high (preparing necessary IT infrastructure adjustments, defining processes, clarify on treatment regarding accounting, etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Recurring costs (other than reporting) too high (potential margin requirements, maintenance of IT infrastructure, employment of qualified staff, regulatory monitoring, possible posting and handling of margins, etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Operational burdens too high (too complicated from an IT point of view, no qualified IT staff, etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Relevant counterparties don't do central clearing either | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| | | | | | | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Conflict of interest | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Legal restrictions to participation in CCPs (e.g. to participation in loss-sharing arrangements such as default funds) | <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 21.1 Please explain your answer to question 21 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.

Question 22. In what way do public entities make use of European trading venues, either Regulated Markets, MTFs or OTFs in order to trade OTC and ETD derivatives and other products?

5000 character(s) maximum

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

Question 23. Is there a need to adjust the trading rules to make it more attractive for public bodies to trade on trading venues with central clearing arrangements?

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

Please explain your answer to question 23:

5000 character(s) maximum

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

d) Broaden the product scope of the clearing obligation

In order for EU CCPs to remain competitive internationally, the range of clearing services they provide should be as broad as possible. The range of products available for clearing is not however a guarantee of their liquidity. Imposing a clearing obligation on certain products has proven to be a key driver to their liquidity, ensuring best execution and lower

prices. We will look further on in this consultation as to how EU CCPs could more easily list additional products for clearing but in this section we will focus on which existing products could be given consideration for an extension of the clearing obligation. The procedure to determine which products should be subject to this obligation is currently specified in EMIR Article 5 and involves the European Commission, ESMA and the ESRB.

Question 1. Is the range of products currently subject to the clearing obligation wide enough while safeguarding financial stability?

- 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.

The limitation to assets classes identified by EMIR (credit and rates) is sufficient. Any evolution would undermine the market consensus reached after the adoption of EMIR Refit in 2019.

Question 2. Could additional products be subject to the clearing obligation?

| | Yes | No | Don't know - No opinion - Not applicable |
|--|-----------------------|----------------------------------|---|
| Equity derivatives | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Repos | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Other Interest Rate Derivatives (e.g. referring the new risk free rates) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Other credit derivatives | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Foreign Exchange Derivatives | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Other | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Please specify to what other product(s) you refer in your answer to question 2:

5000 character(s) maximum

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

Further to the entry into force of EMIR and EMIR Refit, the industry has reached an equilibrium in the clearing sphere. Any additional clearing requirement would greatly undermine the implementation of the clearing regime.

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

In particular, if you answered “yes” in question 2, please specify which types of derivatives you are referring to (i.e. what types of equity derivatives, e.g. 1 to 5 year Total Return Swaps on CAC40 vs. Euribor 3M).

Please also provide an estimate of the typical flows that would be brought to clearing on a monthly basis:

5000 character(s) maximum

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

Question 3. Does EMIR allow enough products to be subject to the clearing obligation?

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

Question 3.1 Please explain your answer to question 3 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.

EMIR provides with a mandatory clearing obligation. Voluntary clearing is possible as an option.

Question 4. If a product is available for clearing but not subject to an obligation are there instances where you would still choose to trade bilaterally?

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

Question 5. In light of the EMIR framework for the clearing obligation, is the definition of OTC derivatives in EMIR clear enough?

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

Question 5.1 Do you see any situation where it could have undue consequences, for example with regards to the determination of the thresholds for the clearing obligation?

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

Question 5.2 Please specify the possible situations it could have undue consequences 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.

The use of OTC contracts to reduce risks relating to commercial activity or treasury financing activity is related to NFCs only, in accordance with Rec 20 of CDR (EU) 149/2013. Hence, under Art. 10 EMIR hedging contracts are excluded from exposure calculation.

UCITS fund also hedge operations, in particular through the use of Foreign Exchange (FX) physically settled derivatives (FX Forwards, FX Swaps) in order to hedge their investment classes denominated in different currencies, in line with the ESMA opinion of 30 January 2017.

Art. 50 of the UCITS Directive provides strict investment restrictions in liquid financial instruments. Art. 1(2)a of the Directive emphasises the role of these investment restrictions as the shares of a UCITS fund can be subscribed by the public (i.e. including natural persons).

Thus, these hedging transactions play an important role to protect individuals against currency risk.

In light of the above provisions outlining the safety of the UCITS framework, we would like to recommend an exclusion of these FX hedging transactions from the calculation of the exposure against the clearing threshold, similarly to the regime benefiting the NFCs.

Such considerations are very much in line with Rec. 19 of EMIR (EU) 648/2012 that underlines the specific characteristics of FX derivatives as follows: In determining which classes of OTC derivative contracts are to be subject to the clearing obligation, due account should be taken of the specific nature of the relevant classes of OTC derivative contracts. The predominant risk for transactions in some classes of OTC derivative contracts may relate to settlement risk, which is addressed through separate infrastructure arrangements, and may distinguish certain classes of OTC derivative contracts (such as foreign exchange) from other classes. CCP clearing specifically addresses counterparty credit risk, and may not be the optimal solution for dealing with settlement risk.

Moreover, these considerations would represent a simple carve out with regards to the principle of interconnectedness between the different asset classes stated in Rec. 7 of EMIR 2019/834.

As underlined by ESMA in its recent Discussion paper (ESMA70-156-5010 - Footnote 27), many funds choose not to calculate the exposure, which means that they have to be considered as FC+. However, these funds will only be subject to CO if trading with IRD or Credit derivatives.

The application of the principle of interconnectedness between the different asset classes implies that when a fund crosses the FX threshold, it will have to clear the few IRS it has in its portfolio even if they do not represent a material exposure.

This scheme has a deterrence effect on middle-sized funds to enter into IRD transactions.

Proportionality could be introduced with an entry floor (e.g. EUR 500 Mio of notional) on the IRD class, under which clearing would not be mandatory.

Question 6. Is the procedure to determine whether a non-financial counterparty should be subject to the clearing obligation under Article 10 clear enough?

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

Question 6.1 How should intragroup transactions be taken into account in the procedure?

5000 character(s) maximum

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

Question 6.2 Should the clearing thresholds be recalibrated based on cleared versus non-cleared rather than OTC versus ETD?

5000 character(s) maximum

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

Firstly, we took good note of the Notice issued by the European Commission on 18 February 2018 regarding the Brexit preparation in the field of post-trading, stating what follows:

- o As of the withdrawal date, derivatives traded on a UK regulated market will no longer fulfil the definition of exchange traded derivatives (ETDs) under EU law. According to Article 2(32) of MIFIR, ETDs are derivatives traded on an EU regulated market, or on a third-country market considered to be equivalent. Thus, under EU law, as of the withdrawal date, ETDs traded on a UK regulated market will be over-the-counter (OTC) derivative contracts.
- o An ETD that becomes an OTC derivative will thus become subject to all EMIR requirements applicable to OTC derivatives transactions: all OTC derivatives transactions count towards the calculation of the clearing threshold in accordance with the provisions of EMIR, and will be subject to the EMIR clearing obligation where one has been adopted as well as certain risk mitigation techniques (notably the exchange of margins).

Secondly, considering counterparties are still buying ETDs on UK markets, the shift to the OTC status impacts the calculation of their exposure and make them crossing the clearing thresholds, and thus become eligible to the CO while they were not before Brexit.

In particular, the products traded on the UK markets are listed options (calls and puts) and listed futures (e.g. on FTSE) with equity underlying. Our members observe that these products are only available, at reasonable price on UK markets. For an equivalent transaction in the EEA the buyer would have to go through an OTC transaction with a broker, which would make it more expensive.

Thirdly, when revisiting the clearing thresholds, EMIR Refit 2019/834 only took into account the usual level of business without including any impact of Brexit.

Fourthly, in line with the above, and in order to alleviate these counterparties to fall unexpectedly under the CO, we would like to recommend a temporary grandfathering to exclude the ETDs traded in the UK from the calculation of the exposure to be compared to the clearing threshold.

Moreover, considering these contracts are entered into through a market regulated under UK law, they are already subject to risk mitigation techniques, including clearing and margining. Thus, it would not be necessary that they fall under the risk mitigation techniques defined in Art. 11(15) EMIR.

This grandfathering would last until similar ETDs are proposed by markets located in the EEA. This period would have to be defined by the European Commission, in accordance with its agenda on the topic, including the Capital Markets Union.

As an alternative option, an increase of the equity threshold by EU 1 Bio would help solving the specific issue caused by the shift of the UK ETDs to OTC. We recall that the definition of the clearing thresholds did not take into account the Brexit unforeseen impacts.

We took good notice in the recent ESMA Discussion paper (ESMA70-156-5010) that an increase of EUR 1 Bio would keep the vast majority of the counterparties under the Clearing Obligation.

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.

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.

We are not sure that a legislative action will be beneficial to the relocation of clearing services in the EU. The key decision driver to choose a CCP, in the EU, in the UK or even overseas remains competitiveness, based in particular on service prices, regulatory obligations like reporting, and risks aspects. Sufficient liquidity is also an item for consideration, but as a side stake as intrinsically linked to service pricing and venue competitiveness.

It is worth noting that the industry observed a sudden inflation of the number of fields to report in the EMIR reporting framework: 85 in 2014, 129 in 2017, 203 in the new regime.

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 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.

As stated in above Q2, we are of the view that competitiveness aspects are the key drivers.

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 an EU CCP is not able to provide a sufficiently competitive offer, there is strong likelihood that clearing would be relocated to other third-country jurisdictions, like the US.

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

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

Question 2. Do you think a macroprudential buffer should be considered in light of this reliance/exposure?

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

Question 2.1 Please explain your answer to question 2 providing, where possible, 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.

c) Set exposure reduction targets

One option suggested by some stakeholders for reducing excessive reliance on Tier 2 CCPs could be to set targets for reducing the level of exposures.

For this section's questions, the sum of initial margins and default fund contributions could be considered as a metric for the level of exposures (please specify under each question if you use other metrics, which ones and why).

Question 1. If targets were to be set in some form or another, what do you think could be a reasonable target to achieve in terms of reduction of overall euro-denominated exposures of EU participants to Tier 2 third-country CCPs?

5000 character(s) maximum

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

Question 1.1 Should exposures to systemic non-EU CCPs somehow be capped?

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

Question 1.2 Please explain your answer to question 1 and 1.1 providing, where possible, quantitative evidence and examples.

Please also indicate over what timeframe such reduction can be achieved:

5000 character(s) maximum

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

Question 1.3 Please explain whether in your view the targets should be set by law or in another form (e.g. supervisory guidance), also assessing the pros and cons:

5000 character(s) maximum

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

Question 2. What do you think could be a reasonable target for you to achieve in terms of reduction of euro-denominated exposure to Tier 2 third-country CCPs and over what timeframe?

If you are a clearing member, please consider both house and client-related exposures. Please explain.

5000 character(s) maximum

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

Question 3. Please indicate whether the targets should be set:

- at a global level (all EU clearing members) - at clearing members' level
- at clearing member and client levels
- other
- don't know / no opinion / not applicable

Question 3.1 Please explain your answer to question 3 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 4. What could be the targets for the [services identified by ESMA \(ESMA Assessment Report under Art. 25\(2c\) EMIR\)](#) as being of a substantial systemic importance:

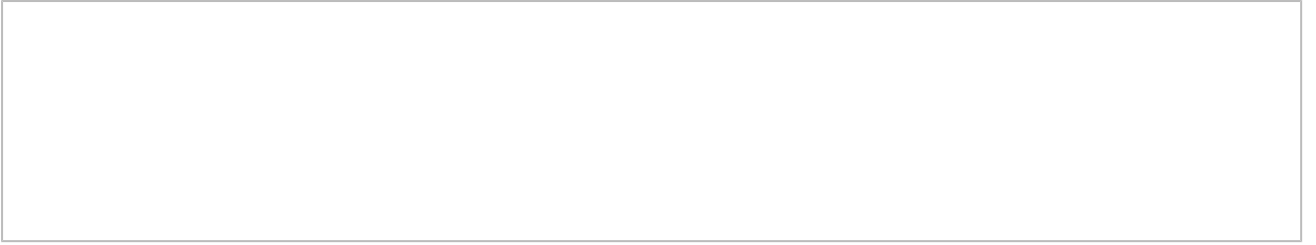
Please select as many answers as you like

- 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 4.1 Please explain your answer to question 4 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 5. What factors should be taken into account in your view when sizing the target and setting the timeline for meeting it?

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|--|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--|
| Need to have a gradual process overtime | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Need to achieve the target rather quickly to address the financial stability risks related to the over-reliance on Tier 2 third-country CCPs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Need to proceed in parallel with steps to build capacity in the EU | <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 5.1 Please explain your answer to question 5 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 6. How could cooperation of all market participants be fostered to move towards the target?

Please explain your answer providing, where possible, examples:

5000 character(s) maximum

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

Question 7. What should happen at the end of the phase leading to reaching the target levels if targets are not met?

What incentives/measures could be set?

Please explain your answer 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.

d) Level playing field

EMIR applies to entities established and authorised in the EU. As a consequence any requirement to clear partially or totally in EU CCPs could create an un-level playing field where non-EU market participants would continue to have access to third-country CCPs for all of their transactions, e.g. for the clearing of euro-denominated OTC derivatives while EU market participants would be restricted to using EU CCPs. Some stakeholders argue that this could lead to two pools of liquidity serving different interests, one being very local inside the Union and a more international and potentially more liquid one abroad. Furthermore, they argue that those EU market participants that would not be subject to specific requirements to clear inside the Union could choose to continue clearing outside.

Question 1. How in your view could this issue be avoided?

Please explain your answer 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 2. In what ways can the clearing of Union currency-denominated derivatives be made obligatory or incentivised to take place in EU CCPs?

Please explain your answer 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 are not sure that a legislative action will be beneficial to the relocation of clearing services in the EU. Competitiveness of the CCP offer will remain the key driver.

Question 3. With specific reference to question 2, how could end clients which are not subject to the CRR be incentivised?

Please explain your answer 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.

e) Facilitate transfer of contracts from outside the EU

Transactions entered into with UK counterparties before the entry into force of EMIR (legacy trades), are currently exempt from the clearing obligation ([Commission Delegated Regulation \(EU\) 2021/236 of 21 December 2020](#) and [Commission Delegated Regulation \(EU\) 2021/237 of 21 December 2020](#)). Any amendment to those transactions would trigger either the clearing obligation or margin requirements, depending on whether they fall under the clearing obligation or not. Though it would not *per se* immediately increase the amount cleared in the EU (as these transactions would likely remain uncleared and un-margined) a permanent waiver for these contracts allowing a repatriation without condition would lower the exposure to third countries in general.

Question 1. Should a permanent exemption be granted allowing for a novation of legacy trades without triggering any EMIR requirements?

- 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, 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 2. Should the legacy trades be made subject to the clearing obligation to be complied with by clearing in EU CCPs where available?

- Yes
- No
- 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.

Question 3. Should compression exercises be made obligatory on these legacy trades?

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

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

Please specify the characteristics of your legacy trades (product type, remaining maturity, notional amount):

5000 character(s) maximum

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

Question 4. Could intragroup transactions be used to facilitate a reduction of exposures towards Tier 2 CCPs?

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

Question 4.1 Please explain your answer to question 4 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 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.

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.

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.

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.

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

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

h) Hedge accounting

Some market participants have mentioned that an obstacle to the rebooking of transactions between the UK and the Union is the different accounting treatment of the rebooking operation within Member States. Some Member States have modified their accounting rules so that any unrealised profits and losses are not considered realised when a rebooking is conducted, in particular with regard to the transaction hedging the original transaction.

Question 1. Should a harmonisation of the hedge accounting rules be considered across Member States in order to reduce the exposure to Tier 2 third-country CCPs?

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

Question 1.2 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 2. Would other accounting rules need to be harmonised within the Union to facilitate the rebooking of transaction currently cleared in Tier 2 third-country CCPs?

-

Yes

No

Don't know / no opinion / not applicable

Question 2.1 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 3. What would be the pros and cons, the costs and benefits of harmonising the hedge accounting rules across Member States?

5000 character(s) maximum

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

i) Transactions resulting from Post Trade Risk Reduction

A vast quantity of transactions currently cleared in Tier 2 CCPs could benefit from multilateral compression exercises that in themselves could lower the notional exposure to those CCPs. Additionally a vast number of legacy transactions could also benefit from compression and rebalancing exercises, the treatment of the risk replacement trade resulting from these exercises could have an impact on the overall exposure to third-country entities and CCPs in particular.

Question 1. In your opinion, to what extent could the current outstanding notional amount be reduced?

Could greater use of compression be done in CCPs and/or the bilateral space?

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 2. How should risk replacement trades resulting from Post Trade Risk Reduction services be treated with regard to the clearing obligation?

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 3. What would be the pros and cons, the costs and benefits of subjecting the risk replacement trades to the clearing obligation? In EU CCPs?

5000 character(s) maximum

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

Question 4. Are there measures that should be considered to facilitate the use of Post Trade Risk Reduction services to transfer trades to the EU, including cleared trades from Tier 2 third-country CCPs to EU CCPs?

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

Please explain your answer to question 4:

5000 character(s) maximum

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

j) Fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms for clearing services

In order to ensure liquidity in EU CCPs, the framework must allow for clients and indirect clients to have the possibility to choose among different competitive offers which clearing member or client clearing service providers may want to use to clear some or all of their portfolios. [EMIR Refit](#) introduced the FRANDT principles but evidence shows that the range of clearing services on offer is limited.

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

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

We are of the view that the FRANDT principles are sufficient. Nevertheless they should actually be applied to provide their effect.

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.

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.

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

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

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

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

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

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

b) Payment/settlement arrangements for central clearing

Some margin calls of CCPs can only be processed at a late hour, sometimes necessitating payments in USD, when EUR payments may not be processed anymore. This puts EU banks at a considerable disadvantage, since it makes them dependent on USD liquidity, even for satisfying margin calls by European CCPs (even for euro-denominated products).

Question 1. What problems do EU CCPs and clearing participants encounter with the current setup of payment and settlement arrangements available to them in the EU?

5000 character(s) maximum

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

Question 1.2 What changes to the current payment and settlement options could be envisaged that would enhance attractiveness of EU CCPs and support the growth of EU-based clearing?

5000 character(s) maximum

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

c) Require segregated default funds

Under EMIR, CCPs can have a single or multiple default funds. Some market participants argue that multiple default funds are an attractive feature, as they can contribute to avoiding contagion and thus reduce financial stability risks.

Question 1. If EMIR were to impose the establishment of segregated default funds to certain EU CCPs to improve their attractiveness, what should be the criteria for establishing which CCPs would need to have this segregated model?

- Number of asset classes cleared
- All CCPs clearing derivatives alongside other products
- Other
- Don't know / no opinion / not applicable

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

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

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.

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.

Question 2. In light of efforts to enhance the clearing capacity in the EU and the overall attractiveness of EU CCPs, do you think there would be benefits of developing interoperability links between EU CCPs?

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

Question 3. Do you think interoperability arrangements for derivatives between EU CCPs could contribute to enhancing the overall liquidity at EU CCPs?

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

Question 3.1 Please explain why you think interoperability arrangements for derivatives between EU CCPs could contribute to enhancing the overall liquidity at EU CCPs:

5000 character(s) maximum

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

Question 4. How would you assess a situation in which Interest Rate Swap clearing happens at more than one EU CCP (e.g. at 2 CCPs) and there is an interoperability link between the two concerning such products?

5000 character(s) maximum

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

Question 4.1 Would this be more convenient for market participants?

- Yes
-

No

Don't know / no opinion / not applicable

Question 5. In the situation described under Question 4, how should the risks related to the arrangement be properly dealt with?

What kind of safeguards should be there in terms of proper risk management?

5000 character(s) maximum

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

Question 6. In the context of CCP links, what are in your view the costs and benefits of cross-margining arrangements?

5000 character(s) maximum

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

Question 7. Would allowing for cross-margining arrangements in the EU be useful/desirable?

- 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:

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

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
- It would be necessary to cover EU clearing members and specific clients
- Other
- 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.

Question 2. What would be the adequate frequency for this data collection?

- Quarterly
- Semi-annually
- Yearly
- Don't know / no opinion / not applicable

Question 2.1 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.

Question 3. Which measures should be used in your view to monitor such progress, beyond notional amounts, initial margins, default fund contributions and capital requirements where applicable?

Please explain your answer:

5000 character(s) maximum

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

V. Supervision of CCPs

Today, supervision of EU CCPs' compliance with EMIR is the responsibility of the national competent authorities of the Member States where the CCPs are established, with the involvement of the supervisory colleges, ESMA (including the CCP Supervisory Committee) and the European Central Bank and the central banks of issue of the Member States. If the EU is to increase its capacity for central clearing and as a consequence receive significant additional flow in the

future, the related risks should be appropriately managed. The supervisory framework for EU CCPs should be strengthened and EU-level supervision should be given a stronger role, to better address risks involved in increased cross-border clearing activity, simplify and accelerate procedures, remove legal uncertainties and possible dual or conflicting instructions, as well as facilitate the coordination with third country supervisory authorities. Because of these and other aspects, supervisory settings are a key element to consider in developing a true capital markets union.

a) Identifying costs related to current supervisory framework and benefits with a stronger role for EU-level supervision

Question 1. Please identify the regulatory compliance costs involved in today's supervisory framework for EU CCPs:

| | 1 (high) | 2 (medium) | 3 (low) | Don't know - No opinion - Not applicable |
|---|-----------------------|-----------------------|-----------------------|--|
| a. Procedures for applications for authorisation to provide central clearing services and to perform activities | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| b. Procedure to notify the national competent authority and apply for relevant additional authorisations (e.g. to extend the scope of services or products offered or activities performed in the EU) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| c. Validations of risk models and parameters | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| d. Supervisory approvals, e.g. with regard to outsourcing | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| e. Involvement and consultations of different bodies (e.g. colleges), supervisors, central banks, and further authorities in supervisory decisions | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| f. Ongoing compliance with Regulation (EU) No 648/2012 , including reports and contacts with bodies (e.g. colleges), supervisors and authorities | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| g. Lack of consistent processes (e.g. different actors involved) across different supervisory procedures | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| | | | | |

| | | | | |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| h. Legal uncertainties arising from different implementation or interpretations of EU Regulations in different Member States or between Member State authorities and ESMA | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| i. Duplicative or conflicting instructions from national supervisory authorities and ESMA | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| j. Other | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 1.1 Please explain your answer providing, where possible, quantitative evidence or examples:

5000 character(s) maximum

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

Question.2 In your view, what would be the benefits of a stronger role for EU-level supervision?

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|--|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--|
| a. It would reduce EU CCPs' regulatory costs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| b. It would enhance the quality of supervision over EU CCPs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| c. It would simplify and accelerate the procedure to apply for authorisation to provide clearing services in the EU | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| d. It would simplify and accelerate the procedure for additional authorisations (e.g. to extend the scope of services or activities offered in the EU) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| e. It would simplify and accelerate validation procedures for risk models and parameters | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| f. It would simplify and accelerate the procedures for obtaining supervisory approvals, e.g. with regard to outsourcing | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| g. It would lead to more efficient use of resources by supervisors at national and EU level | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| h. It would decrease uncertainties that currently arise from different implementation or interpretations of EU Regulations in different Member States or by Member States and ESMA | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| | | | | | | |

| | | | | | | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| i. It would remove the need for market actors to deal with duplicative instructions from more than one supervisory authority | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| j. It would create a level playing field between EU CCPs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| k. It would create a level playing field between EU CCPs on the one hand and third-country CCPs on the other hand | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| l. It would improve EU capacity to deal with the cross-border risks arising from greater amounts of clearing in the EU | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| m. It would improve the resilience of EU CCPs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| n. Other | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 2.1 Please explain your answer providing, where possible, quantitative evidence or examples:

5000 character(s) maximum

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

Question 2.2 Please indicate whether a stronger role for EU-level supervision could also produce negative side-effects:

5000 character(s) maximum

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

Question 2.3 Do you have other comments?

5000 character(s) maximum

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

b) How should EU-level supervision be given a stronger role?

Question 1. Do you agree that giving a stronger role to EU-level supervision could simplify and accelerate procedures, remove legal uncertainties and possible dual or conflicting instructions, ensure coherent application of EU Regulations, facilitate the coordination with third country supervisory authorities and create a level playing field between EU CCPs?

- 1 - Strongly agree
- 2 - Rather agree
- 3 - Neutral
- 4 - Rather disagree
-

5 - Strongly disagree

Don't know / no opinion / not applicable

Question 1.1 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 2. Please indicate how to give a stronger role to EU-level supervision:

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|--|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--|
| a. A single EU supervisor, responsible for the supervision of all EU CCPs, would be the best option. All EU CCPs are systemic to the financial stability of the EU or one or more of its Member States, and should be treated and supervised in the same way. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| b. A single EU supervisor, responsible for the supervision of certain EU CCPs, which warrant stronger supervisory arrangements, would be the best option. Other EU CCPs should remain under the supervision of national competent authorities. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| c. Stronger EU-level supervision of certain or all EU CCPs could be ensured by joint supervisory teams (one per CCP) composed of ESMA and (some or all) national competent authorities responsible for CCP supervision. National competent authorities should continue to carry the primary responsibility for supervision of CCPs, but the involvement of other authorities in daily and ongoing supervisory work would ensure information sharing, coherent application of EU Regulations and could improve the level playing field between EU CCPs. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| d. Stronger EU-level supervision and a strengthened supervision could be ensured through the closer/stronger involvement of ESMA, for example by introducing a stronger mechanism to ensure compliance with its opinions and recommendations and in a wider set of areas | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| | | | | | | |
|---|---|---|---|---|---|---|
| <p>e. Stronger EU-level supervision and a strengthened supervision could be ensured through closer/stronger involvement of the central banks, in particular in areas relevant to the transmission of monetary policy or the smooth operation of payment systems (liquidity risk control, margin requirements, collateral, settlement arrangements or interoperability arrangements)</p> | ● | ● | ● | ● | ● | ● |
| <p>f. Other</p> | ● | ● | ● | ● | ● | ● |

Question 2.1 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 3. To ensure stronger EU-level supervision, which of the following authorities or bodies should be more closely involved in supervision?

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|---|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--|
| a. ESMA | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| b. European Central Bank and the relevant central banks of issue of Member States | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| c. Single Supervisory Mechanism and other bank supervisors for non-Banking Union Member States | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| d. Competent authorities of other Member States e.g. in joint supervisory teams as referred to in point (c) of Question 2 | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| e. Colleges | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| f. 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 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.

Question 4. If a distinction between EU CCPs were to be made under the EU supervisory framework as per point (b) of Question 2, please indicate if you agree that the following criteria are relevant:

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|---|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--|
| a. Volume and value of central clearing activity | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| b. Interconnectedness with other CCPs | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| c. Scope of products centrally cleared | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| d. Geographical scope of trading venues connected | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| e. Geographical scope of clearing members and clients | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| f. Other | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 4.1 Please explain your answer 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.

c) Areas for a stronger role of EU-level supervision

Question 1. Please identify the most important areas where EU-level supervision should have a stronger role:

| | 1 (current situation satisfactory) | 2 (stronger EU-level supervision is needed/ desirable) | 3 (supervision by a single EU supervisor is needed/ desirable) | Don't know - No opinion - Not applicable |
|---|--|--|--|--|
| 1) Access to CCPs (Article 7 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 2) Access to a trading venue (Article 8 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 3) Reporting obligation (Article 9 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 4) Authorisation of a CCP (Article 14 of EMIR); | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 5) Extension of activities and services (Article 15 of EMIR); | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 6) Capital requirements (Article 16 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 7) Withdrawal of authorisation (Article 20 of EMIR); | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 8) Review and evaluation (Article 21 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 9) Emergency situations (Article 24 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| | | | | |

| | | | | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| 10) Senior management of the board (Article 27 of EMIR); | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 11) Risk committee (Article 28 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 12) Record keeping (Article 29 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 13) Shareholders and members with qualifying holdings (Articles 30-32 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 14) Conflicts of interest (Article 33 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 15) Business continuity – general provisions (Article 34 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 16) Outsourcing (Article 35 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 17) General conduct of business rules (Article 36 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 18) Participation requirements (Article 37 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 19) Transparency (Article 38 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 20) Segregation and portability (Article 39 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 21) Prudential requirements (Entire Chapter 3 of Title IV of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 22) Margin requirements (Article 41 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 23) Default fund (Article 42 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 24) Other financial resources (Article 43 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 25) Liquidity risk controls (Article 44 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 26) Default waterfall (Article 45 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 27) Collateral requirements (Article 46 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 28) Investment policy (Article 47 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| | | | | |

| | | | | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| 29) Default procedures (Article 48 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 30) Review of models, stress testing and back testing (Article 49 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 31) Settlement (Article 50 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 32) Calculations and reporting for the purposes of Regulation (EU) No 575/2013 (Chapter 4 of Title IV of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 33) Interoperability arrangements (Article 51 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 34) Risk management (Article 52 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 35) Provisions of margins among CCPs (Article 53 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 36) Approval of interoperability arrangements (Article 54 of EMIR) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 37) Investigations into infringements of Title IV of EMIR | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 38) Imposition of supervisory measures for infringements of EMIR | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 39) Other | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 1.1 Please explain your answers 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.

d) ESMA's role in fostering a coherent application of EMIR

Question 1. In your view, how could ESMA’s role in fostering convergence and coherence of the application of EMIR in the EU (e.g. among national competent authorities and CCP supervisory colleges) be improved?

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|---|-----------------------|-----------------------|-----------------------|------------------------|--------------------------|--|
| a. Coordination of direct contacts between Member State authorities responsible for CCP supervision | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| b. Coordination of direct contacts between Member State authorities responsible for supervision of a wider set of financial market actors (CCPs, banks, investment firms etc.) or policies (e.g. central banks) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| c. Coordination of discussions in CCP colleges | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| d. Strengthening of the ESMA CCP Supervisory Committee and the areas where it should be consulted by national competent authorities | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| e. Widening the scope for opinions by the ESMA CCP Supervisory Committee to the ESMA Board of Supervisors | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| f. Increased use of obligation for national competent authorities to comply or explain deviations from opinions issued by ESMA or CCP colleges | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| g. Increased use of ESMA regulatory technical standards and implementing technical standards | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| | | | | | | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| h. Increased use of ESMA recommendations | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| i. Increased use of ESMA guidelines | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| j. Increased use of ESMA Questions & Answers | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| k. Other | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 1.1 Please explain your answer and provide, where possible, examples to illustrate your views:

5000 character(s) maximum

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

VI. EMIR and other Regulations/Directives

The proper functioning of EMIR also requires clarity regarding its interaction with other relevant legislation. The Commission's services are interested in possible other legislation where provisions may not be sufficiently clear in their interaction with EMIR or vice versa. Additionally the framework applicable to non-centrally cleared OTC derivatives has an impact on that of the centrally cleared ones, any undue friction between those two frameworks could impede the proper functioning of the EU clearing infrastructure.

Question 1. Should amendments be introduced to the following legal instruments to better harmonise the requirements applicable to entities active in OTC derivatives?

| | 1 (strongly agree) | 2 (rather agree) | 3 (neutral) | 4 (rather disagree) | 5 (strongly disagree) | Don't know - No opinion - Not applicable |
|--|-----------------------|----------------------------------|-----------------------|----------------------------------|--------------------------|--|
| Link between EMIR and MiFID with regards to the definition of OTC derivatives, central clearing requirement, DTO determination | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| CRR and CRD | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| UCITSD | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| AIFMD | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| MMFR | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Solvency | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other amendments to EMIR in relation to non-centrally cleared derivatives | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please specify to what other amendment(s) to EMIR you refer in your answer to question 1:

5000 character(s) maximum

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

Regarding UCITS Directive. The ESMA Guidelines 2014/937 on Efficient Portfolio Management for UCITS and ETFs are limiting the re-use of collateral received (cash and non-cash collateral) for repo and sec-lending transactions. The Guidelines were drafted prior to EMIR and UMR provisions coming into force. There is a need to build more flexibility in the rules and allow for the re-use of collateral, in particular in view of UMR phase 6 go-live in Sept. 2022. Paragraphs 43(i) and 43(j) require revisions to allow a re-use of collateral specifically for EMIR and UMR collateral exchange requirements.

Regarding the new Article 11(15)aa of EMIR. We believe that regulators should reduce the compliance and operational burdens for smaller counterparties to use quantitative models to calculate regulatory IM, including internal back-testing and model governance processes. These requirements, which we refer to as “prudential-style governance”, are based on mechanics already utilized by banks to comply with capital requirements and include: internal initial validation for conceptual soundness and data-series reliability /representativeness; model documentation (including limitations and assumptions); ongoing monitoring and back testing; and independent auditing of all of the above. They are similar to the provisions of the CRR (Regulation EU 2019/876 amending Regulation EU 575/2013) limiting the use of prudential internal models.

Under the EU rules, however, the requirements directly apply to all in-scope counterparties. For the non-brokers investment funds brought into scope in UMR phases 5 and 6, compliance with these banking-like requirements may prove impossible, as they will need to develop and manage expensive monitoring and governance capabilities from scratch on an unscalable narrow scope. These obstacles and obligations present a significant impediment to the expanded use of internal models – including the ISDA SIMM.

The use of the ISDA SIMM has been widely approved and accepted by global regulators and has to date been the primary margin methodology used for uncleared margin rules implementation. SIMM implementation standards are well-known by regulators and markets participants alike, and SIMM model performance monitoring on actual portfolios takes place on a global basis. Management and development of the SIMM is governed through a well-established framework, which involves consultation and reporting to regulators. For these reasons, where non-brokers investment funds are relying on a broadly used model that has already been reviewed or approved by regulatory or supervisory authorities to calculate their regulatory IM (either directly, or by a third party on their behalf), individual model governance requirements should not be necessary and regulators should exempt all phase 5 and 6 non-brokers from both the internal back-testing requirements of Article 14 (provisions 3-6) and the Article 18 requirement for an internal governance process, in the CDR 2016/2251.

Question 1.2 Please explain your answer to question 1.

If you think that amendments are required, please clearly indicate which amendments should be introduced, their rationale as well as their potential costs and benefits:

5000 character(s) maximum

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

VII. Other issues

The Commission's services are interested in possible other matters that could potentially contribute to enhancing the attractiveness and efficiency of EU CCPs and clearing services that you may have encountered in the context of EMIR that might be important for the review.

a) Blockchain and Distributed Ledger Technology (DLT)

Question 1. Could blockchain and DLT be used in the field of clearing to improve the attractiveness and efficiency of EU CCPs and clearing markets?

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

b) Other issues

Please provide any further suggestions to improve the attractiveness and competitiveness of EU CCPs and clearing markets, as well as the robustness of EU supervisory arrangements in order of impact and priority. Please provide supporting evidence:

5000 character(s) maximum

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

Useful links

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2022-central-clearing-review_en\)](https://ec.europa.eu/info/publications/finance-consultations-2022-central-clearing-review_en)

[Consultation document \(https://ec.europa.eu/info/files/2022-central-clearing-review-consultation-document_en\)](https://ec.europa.eu/info/files/2022-central-clearing-review-consultation-document_en)

[More on derivatives and EMIR \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/post-trade-services/derivatives-emir_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/post-trade-services/derivatives-emir_en)

[Specific privacy statement \(https://ec.europa.eu/info/files/2022-central-clearing-review-specific-privacy-statement_en\)](https://ec.europa.eu/info/files/2022-central-clearing-review-specific-privacy-statement_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

fisma-central-clearing-review@ec.europa.eu