

Measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets

2022/0403(COD) - 07/12/2022 - Legislative proposal

PURPOSE: to increase the safety and efficiency of Union central counterparties (CCPs) by improving their attractiveness, encouraging clearing in the Union and enhancing the cross-border consideration of risks.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

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

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

A safe, robust, efficient and attractive clearing system in the EU is essential for a well-functioning Capital Markets Union. If clearing does not function properly, financial institutions, companies and investors face more risks and higher costs – as the 2008 financial crisis showed.

The proposal aims to mitigate these obstacles in order to foster modern and competitive CCPs in the EU that can attract business.

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

This proposal is part of the initiative aimed at ensuring that the EU has a safe, robust and competitive central clearing ecosystem, thereby promoting the Capital Markets Union (CMU) and reinforcing the EU's open strategic autonomy. Robust and safe central counterparties (CCPs) enhance the trust of the financial system and crucially support the liquidity of key markets.

CONTENT: the Commission proposal introduces **targeted amendments** to EMIR which aim to **improve the central clearing system in the EU**, making EU CCPs more efficient and attractive. It addresses the

vulnerabilities that stem from the current excessive reliance on certain third-country CCPs deemed to be substantially systemic for the EU, ensuring that the EU has a competitive and efficient clearing system that is safe and resilient.

The proposed regulation will have a positive impact by:

- **improving the attractiveness of EU CCPs** by, for example, shortening the approval process for offering new services to 10 working days instead of up to 2 years in certain cases;
- **enhancing the resilience of the clearing system** considering recent developments on energy markets by further enhancing the existing supervisory framework;
- **reducing excessive reliance on third-country CCPs**, strengthening the EU's open strategic autonomy, by requiring all relevant market participants to hold active accounts at EU CCPs for clearing at least a portion of certain derivative contracts.

More specifically, **clearing members** (mainly banks) will benefit from extended, faster clearing offers by CCPs, thereby providing more choices on where to clear.

As for the **clients**, such as non-financial corporates or financial market participants, they will benefit from:

- more transparency on margin models and collateral requirements;
- information on where to clear certain contracts that can be cleared both at a third-country CCP and at an EU CCP; and
- the possibility to use bank and public guarantees.

In addition, the proposal entails two different aspects related to the **equivalence framework** under EMIR.

First, the Commission simplifies the framework for **intragroup transactions**. It provides more legal certainty to market participants and international partners by deleting the condition of an equivalence decision to benefit from intragroup exemption and replacing it by a **list of jurisdictions** for which an exemption cannot be granted. In order to benefit from the intragroup exemption, entities located in third countries should be in a country that is not identified as having deficiencies in terrorist financing and anti-money laundering regulations or considered as a non-cooperative jurisdiction for tax purposes. The country should also not have been identified by the Commission based on legal, supervisory and enforcement arrangements with regard to risks, including legal and counterparty credit risks.

Second, the proposal introduces the possibility for the Commission to take a more **proportionate approach** when adopting an equivalence decision for a third country by waiving the requirement to have an effective equivalent system for recognising third-country CCPs. This will be possible only when it is deemed to be in the interests of the Union and particularly when the risks involved in clearing in that third country are low.