

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

2022/0403(COD) - 24/04/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 464 votes to 115, with 13 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

The European Parliament adopted its position at first reading under the ordinary legislative procedure.

The European Market Infrastructure Regulation (EMIR) lays down rules on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories. The proposed EMIR review contains several legislative measures to improve EU clearing services, notably by streamlining and shortening procedures, improving consistency between rules, strengthening CCP supervision and requiring market participants of substantial systemic importance, who are subject to a clearing obligation, to have an operationally active account at an EU CCP.

The proposal aims at:

- streamlining and shortening procedures for authorities to approve new activities or services as well as changes to risk models for CCPs, to make them more attractive to market participants;
- improving consistency between rules for banks and other pieces of financial sector legislation. This aims at allowing also e.g. insurance companies and funds to benefit from incentives (such as lower capital requirements) when clearing through an EU CCP;
- strengthening CCP supervision by establishing joint supervisory teams for certain tasks, facilitating the monitoring of cross-border risks to the EU throughout the clearing chain by the EU authorities that are part of the EU system of financial supervision and giving emergency powers to ESMA's CCP supervisory committee;
- requiring market participants subject to a clearing obligation to clear a portion of the products that have been identified by ESMA as of substantial systemic importance through active accounts at EU CCPs;
- enhancing powers of banks' and investment firms' supervisors to address concentration risk from exposures to CCPs;
- simplifying equivalence assessments under EMIR where risks involved in clearing in a third country are particularly low.

The amended text:

- provides for supervisors to apply **streamlined supervisory processes**, such as approval and validation procedures;

- **strengthens cooperation, coordination and information sharing** between supervisors and ESMA, while ensuring an appropriate division of tasks between national authorities and ESMA;
- **strengthens ESMA's role by giving it a coordinating role in emergency situations**, while clarifying that ultimate decision-making powers rest with the competent national authorities. In addition, ESMA will be informed of and may request to be invited to on-site inspections and issue opinions in a wide range of areas.

To ensure the consistent functioning of all colleges and to further enhance supervisory convergence, the college should be co-chaired by the national competent authority and any of the independent members of the CCP Supervisory

Committee. To foster cooperation between ESMA and competent authorities, the co-chairs should jointly decide the dates of the college meetings and establish the agenda of such meetings. However, to ensure consistent decision making and that the CCP's competent authority remains ultimately responsible, in the event of a disagreement between the co-Chairs, the final decision should, in any case, be taken by the competent authority, who should provide ESMA with a reasoned explanation of its decision.

The amended text establishes a **solid active account requirement** (AAR) that will require certain financial and non-financial counterparties to have an account at an EU CCP, which includes operational elements such as the ability to handle the counterparty's transactions at short notice if need be and activity elements so that the account is effectively used. In addition, a **joint monitoring mechanism** has been created to oversee the application of this new requirement.