

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

Fields marked with * are mandatory.

Introduction

Rationale for launching the targeted consultation

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

[On 10 November 2021, Commissioner McGuinness announced an extension of the equivalence decision for the UK framework on central counterparties.](#) This extension will allow the Commission to come forward later in 2022 with proposals to

- **Build domestic capacity** through measures to make the EU more attractive as a competitive and cost-efficient clearing hub, and thus incentivise an expansion of central clearing activities in the EU
- **Strengthen supervision:** if the EU is to increase its capacity for central clearing, the risks resulting from an increased activity need to be appropriately managed. As such, there is a need to strengthen the EU's supervisory framework for CCPs, including a stronger role for EU-level supervision

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

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

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

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

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

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

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

Background on the EMIR framework

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

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

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

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

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

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

Responding to this consultation

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

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

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

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

More information:

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

About you

* Language of my contribution

- Bulgarian
- Croatian

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

* I am giving my contribution as

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

* First name

Paul

* Surname

Spang

* Email (this won't be published)

paul.spang@deutsche-boerse.com

* Organisation name

255 character(s) maximum

Deutsche Börse Group

* 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.

20884001341-42

* Country of origin

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

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

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

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

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

* Field of activity or sector (if applicable)

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

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

* **Contribution publication privacy settings**

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

Anonymous

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

Public

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

I agree with the [personal data protection provisions](#)

General questions

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

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

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

Please specify to what other option(s) 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.

Please refer to our response under sections 3f and 7b.

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.

Deutsche Börse Group (DBG), in particular its CCPs Eurex Clearing and European Commodity Clearing (ECC), is generally supportive of a market driven approach to migrating systemically relevant business from Tier 2 UK CCPs until the end of the transition period in mid-2025.

We deem measures to broaden the scope of clearing participants as very effective. In particular, PSAs and public entities are attractive counterparts for global and regional dealers. If more of them predominantly cleared especially their Euro and Zloty based IRS within the EU, it would increase activity at EU CCPs and might even have a pull effect for other market participants. Further, such participants are instrumental to building a healthy and balanced ecosystem of payer and receiver end-clients in the EU and reducing financial stability risks.

It would greatly enhance the attractiveness of the EU clearing ecosystem to PSAs if EU central banks would join cleared repo markets and set the basis to provide directly or indirectly (via banks) liquidity to PSAs under extreme, stressed market conditions. Such a measure would clearly differentiate the EU environment from a third country environment and would eliminate balance sheet constraints of banks in such extreme circumstances.

Also, a review of the functioning of the clearing threshold methodology for IRD may be appropriate in order to ensure that market participants with significant risk exposures but relatively low turnover move into central clearing and thereby contribute to a competitive EU clearing ecosystem. In that context it may be appropriate to separate the cross-asset classes clearing obligation triggers into single asset class triggers.

In order to mitigate any systemic risk potentially associated with a market wide obligation to move large positions in a relatively short period of time and to support a market driven migration, we would encourage the Commission to require EU based market participants to maintain an active account with an EU CCP for the relevant products in scope. Under this scenario, EU based market participants could be requested to demonstrate to their respective prudential regulator progress in building exposure and activity with an EU CCP as well as robust contingency plans with regards to the expiry of the temporary equivalence. While we would not support a general target level of activity or exposure held at this stage, "active" should be measured in two dimensions: (a) the regular activity measured in cleared volume and (b) the amount of

exposure measured in initial margin.

Further, we would recommend to focus on the migration of EU end client business and exempt dealer banks' market making activity or client clearing services for non-EU clients to address their concerns regarding global competitiveness. An EU-wide harmonization of hedge accounting rules enabling the execution of a CCP portfolio transfer without unwanted accounting or tax (P&L) impact would remove a significant barrier to transfer portfolios subject to hedge accounting. We suggest local corporate tax treatment for such transaction to follow the accounting approach.

While "punitive" measures towards market participants (e.g. obligation to clear in the EU, higher capital charges for Tier 2 third-country CCPs) appear to be effective, they should only be seen as a last resort in case the market driven approach does not yield the intended results at the end of the transition period. In this case, we would suggest a targeted approach, defining a minimum threshold e.g. of initial margin to be held in an EU CCP. Should the threshold not be met, prudential regulators could take supervisory action and apply capital add-ons via Pillar 2 capital requirements or other appropriate measures towards firms not subject to capital requirements. We caution against broad-based punitive measures which would not take into account counterparties' different levels of preparedness and could have unintended impacts.

Rather than punitive measures, we would advocate for temporary incentives to make the EU environment more attractive, such as a reduced risk weight for EU market participants facing an EU QCCP or that EU Central Banks would allow the CCP to leave margin cash at the EU Central Bank at preferential rates. This would not only benefit banks, but importantly buy-side firms who are deemed critical to build out EU based liquidity pools.

While measures towards CCPs are unlikely to support the objective of reducing reliance on Tier 2 third-country CCPs directly, they are very relevant to make the EU clearing environment generally more attractive in the medium term – such as measures to streamline the approval processes for new products and services or other material changes or addressing the requirement for some EU CCPs to hold a banking license to ensure continued access to central bank liquidity.

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.

The benefits of central clearing by PSAs need to be assessed both at systemic and micro level. From a systemic point of view, PSAs are attractive trading counterparts for global and regional dealers. If these entities would predominantly clear in particular their Euro and Zloty based Interest Rate Swaps within the EU, this would increase the level of activity at EU CCPs and might even have a pull effect for other market participants. Furthermore, such participants are also important to build a healthy and balanced ecosystem of payer and receiver end-clients within the EU to contribute to the overarching financial stability objective.

Regarding the individual level, direct access models offered by EU CCPs such as Eurex Clearing's ISA Direct are generally best suited to the needs of PSAs, given: i) their directional portfolios, ii) demands for operational and process efficiencies, iii) limited appetite for direct exposure to general clearing members, and iv) desire for efficient porting capability in the event of a clearing member default.

The expiry of the PSA exemption will likely lead to an increase in the number of firms adopting such new models. Against this background and given the general competitive nature of the clearing landscape, we expect clearing in the EU to become more attractive to PSAs in the future. Importantly, the removal of certain disincentives in EU regulation to the direct /sponsored access models (see response to Question 2) would also make clearing in the EU more attractive to PSAs.

Most importantly, PSAs have concerns with regards to access to liquidity in extreme stress scenarios where the liquidity provision by banks has not always worked effectively in the past. In order to address this concern and at the same time differentiate the EU from a third country environment in terms of their attractiveness to PSAs, central banks could connect to the cleared repo environments and via that route reserve the option to provide liquidity directly (via CCP) or indirectly (via bank and CCP) to PSAs in extreme market conditions. A central bank connection to cleared repo could be implemented in two ways: (a) The central bank provides such liquidity via a Request for Quote mechanism directly to the PSAs (but without becoming their counterpart as the cleared transaction is intermediated by the CCP); or (b) the central bank provides such liquidity to a bank participating in the cleared environment and the bank provides such liquidity to the PSA. The benefit of using a cleared environment over bilateral liquidity provision is that the bank ultimately can net the central bank and the PSA exposure, thereby providing liquidity in a much more capital efficient way addressing potential balance sheet constraint in stressed market conditions providing an obstacle for bilateral lending to the PSA.

Please also refer to our response to ESMA's consultation on central clearing solutions for PSAs for further information, available at: <https://www.esma.europa.eu/file/55850/download?token=u7vSCw96>.

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.

We have invested heavily in direct and sponsored access and specifically designed them to address the needs of the buy-side (PSAs, insurance and asset managers). Such models offer on the one hand the possibility to access the cleared repo markets, which have been very robust in crisis situation to source liquidity, but at the same time ensure a high level of asset protection and portability for both the cleared swaps and repo markets. However, there are currently regulatory hurdles and a lack of economic incentives that prevent a greater adoption of access models by PSAs and other clients. Accordingly, DBG would recommend a number of regulatory measures which would remove economic disincentives to the use of direct access models in the EU by PSAs and the buy-side in general, making the current offer by EU CCPs

more attractive for such market participants and paving the way to ensure a balanced clearing ecosystem in the EU that ensures access to central clearing to a broad range of market participants.

Leverage Ratio: In order to ensure consistency with the RWA treatment of unfunded default fund contributions and avoid unreasonable barriers to central clearing, the CRR should clearly state that unfunded contributions do not contribute to the exposure measure under the leverage ratio. This is particularly important in light of the foreseen implementation of a 10% credit conversion factor (CCF) for off-balance sheet items. Our modelling shows that any capital charges for unfunded contributions under the Leverage Ratio can have a material negative impact on the business case for adoption of direct access models.

Risk weights: The CRR already offers preferential risk weights to cleared transactions of banks who are clients of clearing members of a qualifying CCP, subject to a range of conditions commonly referred to as the “look-through criteria.” It should be noted that this preferential treatment may indirectly disincentivize banks (clearing as clients) to adopt direct access models, and may need to be revisited depending on the prevailing policy objectives. In contrast to CRR credit and financial institutions, regulators did not envisage the situation of insurers becoming direct members of a CCP through direct access models, and accordingly there is a gap in the regulation. Solvency II only addresses their exposure to Clearing Members, resulting in a fallout of beneficial treatments when calculating counterparty default risk. Due to this gap, an insurance firm is economically better off under traditional client clearing compared to using direct access models. Solvency II should therefore clarify and apply explicitly the preferential risk weights applicable to credit institutions as Clearing Members also to insurance undertakings and pension funds in alignment with the CRR II look-through criteria.

Funds regulation: Similar to Solvency II above, fund regulation does not recognize the specific nature of centrally cleared transactions. Currently the MMF Regulation includes a counterparty limit of maximum 15% for EU MMFs while a 20% limit exists for UCITS in UCITS V, with no specific provision for CCPs. The AIFMD does not include any provisions limiting counterparty exposure at all. Consequently, these limits greatly hinder the uptake of risk reducing and efficient direct repo and OTC clearing in the EU by buy-side entities. In order to reflect the risk reducing nature and systemic importance of CCPs, CCP cleared transactions should be excluded from counterparty exposure and diversification requirements similar to CRR (Qualifying CCP risk weight of only 2%). Furthermore, regulatory requirements should explicitly allow that all UCITS /AIFs that have received collateral via title transfer in a securities financing transaction (SFT) are permitted to pledge back this collateral to the provider of the collateral as long as the collateral is held bankruptcy remote from the initial collateral provider. This would allow for a cost and operational efficient measure to reduce the costs of clearing. In addition, UCITS should be allowed to net exposures arising from centrally cleared derivatives and SFTs for the calculation of the counterparty risk limit.

To this end, UCITS should be permitted to raise cash through repo markets in order to meet cash margin requirements from centrally cleared derivatives. In following these recommendations, the buy-side would not only benefit from the offer of EU CCPs and the high risk management standards they apply, but in general systemic risk could be further decreased in a continued approach to stabilize and safeguard financial markets.

Please also refer to our response to Question 4.2 for suggested improvements in relation to direct coverage of the day-to-day funding of margin requirements of direct access participants by third parties.

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 3.1 Please indicate the number of EU PSAs on-boarded over the last year, for what type of asset classes (e.g. repos/IRSs...) and, if possible, from which countries they were:

5000 character(s) maximum

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

Please note that we do not have data readily available for listed derivatives as Eurex Clearing does not have such information where the clients are organized in a net omnibus accounts as the CCP cannot identify client specific information.

For OTC IRD we saw the onboarding of 18 new PSAs in 2021 with a unique LEI code (possibility of multiple clearing set-ups under the same LEI), reaching a total of 62 unique PSA clients with 40 having cleared at least one trade throughout 2020/21 (65% of total). Those clients are based in Netherlands, Denmark, Germany, France, United Kingdom, Switzerland and Spain, while those that have at least one cleared trade from the first four.

The cleared volume of such clients jumped from 6,3 bn EUR in 2020 to 71,1 bn EUR in 2021, with 90% coming from Netherlands. Respectively the average initial margin figure for PSAs jumped from 137 million in 2020 to 788 million EUR in 2021, with the majority again originating from Netherlands.

5 Dutch pension funds connected for centrally cleared repo to Eurex Clearing in 2021.

Question 3.2 How do you see these numbers evolving overtime?

5000 character(s) maximum

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

Some EU PSAs already clear their repo and OTC IRS business voluntarily. We see an upward trend both in terms of the number of PSA accounts onboarded and cleared volume which indicates that market participants are preparing for the entry into force of the clearing obligation. As further explained in our response to question 1, we expect this increase in PSAs clearing to have a positive impact on the EU's clearing ecosystem.

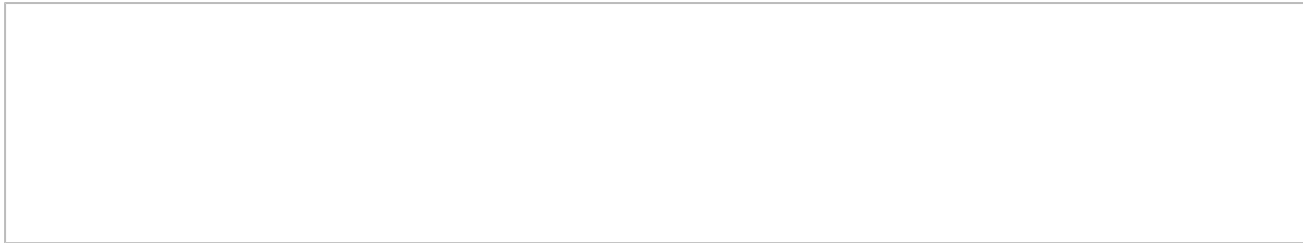
Question 4. (For clearing members) Have you considered becoming a sponsor/clearing agent for a PSA or other buy-side entities in a direct /sponsored access model offered at EU CCPs?

- 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.

Direct access models have a range of benefits for clearing members, and those benefits vary between sponsored/ indemnified access models which are available to a broad set of clients, and hybrid direct access models which are available for clients with strong creditworthiness. Sponsored and hybrid direct access models incentivize clients to consolidate their trading activities with the clearinghouse, reducing the need for clients to use multiple clearing members. Clearing members and clients benefit from netting and operational efficiencies as a result of this reduced complexity. In respect of repo, such access models provide substantial capital benefits allowing clients access to cleared repo in a capital efficient manner for clearing members. The Leverage Ratio treatment of repo is aligned with the accounting framework which treats such transactions on a gross basis (no netting of cash and collateral), and netting of cash payables and cash receivables only permissible subject to a range of criteria. These models remove the clearing member from the trade flow between the client and the clearinghouse, consuming substantially less balance sheet and reducing leverage exposure, compared to traditional client clearing of repo.

Where the clearing member remains the liquidity provider for the repo and the funding or financing is sourced via the clearinghouse, the clearing member can also achieve substantial balance sheet savings and reduced leverage exposures through the application of balance sheet netting. The capital held for sponsored access models is limited to default fund contributions and any claim under the indemnity provided by the clearing member in favor of the clearinghouse, where the latter benefits from any margin payments made by the client to the clearinghouse.

Direct access models reduce capital requirements for clients' trade exposures even further (compared to sponsored access and traditional client clearing) as there is no indemnity required by clearing members, resulting in lower RWAs and Leverage Ratio exposure for both repo and derivative portfolios. Clearing members' capital requirements under direct access models are limited to the default fund contribution and additional rights of assessments. Clearing members also benefit from reduced concentration risk for directional clients.

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.

Direct access and sponsored access models could be further enhanced and the utility improved, if third parties are able to directly cover the day-to-day funding of margin requirements of direct access participants, thereby reducing the liquidity, legal and operational burdens of meeting CCP margin requirements.

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.

Providing collateral transformation services to PSAs, especially funding, is very balance sheet intensive for banks. Therefore, Eurex Clearing developed the ISA Direct clearing model which gives PSAs access to the liquid and resilient CCP cleared repo markets. As a result, banks can provide liquidity to PSAs through CCP cleared repos at reduced or no capital costs as banks can net CCP cleared (reverse) repos with other participants of the CCP which is impossible to achieve in non-CCP cleared repo markets.

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.

While it would be difficult to estimate the flow of Union currency denominated OTC derivatives that will be brought to clearing in the EU as a result of the application of the clearing obligation to PSAs, we would reiterate that PSAs are considered as attractive counterparties by global dealers. The flows generated by PSAs are important to building up a healthy and balanced ecosystem of payer and receiver end-clients within the EU to contribute to the overarching financial stability objective (please also refer to our response to question 1 of this section). It is important to note that cleared volumes by PSAs might appear relatively small compared to the overall market, however PSA portfolios usually are long-dated and directional and therefore carry significant exposure, which appears to be more important to initially build the EU based Euro swaps clearing eco-system.

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

Please specify to what other approach(es) 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.

For OTC IRD Eurex has 84 clearing members onboarded with a unique LEI (59 GCMs and 25 DCM) and 405 disclosed clients with a unique LEI connected to the GCMs (half of them had at least one trade in 2020 /21). In addition to that, there are 3 clearing member agents onboarded and 6 basic clearing members.

For ETD Eurex has 80 clearing members onboarded as of end 2021 (49 GCM and 31 DCM) and 300 disclosed clients with a unique LEI. Please note that there are hundreds of un-disclosed clients in so called Net Omnibus Accounts where Eurex Clearing has no transparency about their identity; such information is only transparent for the respective clearing member.

For Repo Eurex has 134 clearing members onboarded as of end 2021 (26 GCM and 108 DCM). Furthermore, there are 6 disclosed clients (DCs). It should be noted that those DCs are clients of a central bank (this is notably different from a set-up where the clearer is a credit institution subject to the balance sheet constraints posed by prudential regulation). In addition, there are 2 clearing member agents onboarded and 5 basic clearing members.

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 7.1 What initiatives do you think could be taken, if relevant?

Please explain your response 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.

Please also refer to our response under the Section 1a Clearing obligation for PSAs – Question 2.

The importance of the insurance industry to the Capital Markets Union as one of the largest institutional investors in the EU should be mirrored in the (re-) insurance undertakings' exposure to CCPs. However, in contrast to CRR credit and financial institutions, Solvency II does not explicitly foresee insurance undertakings to be (direct) clearing members of CCPs but only addresses their exposure to Clearing Members, resulting in a fallout of beneficial treatments when calculating counterparty default risk. When insurances or pension funds access a CCP directly through facilitated direct clearing models, Solvency II should clarify and apply explicitly the preferential risk weights accorded to credit institutions as Clearing Members also to insurance undertakings and pension funds in alignment with the CRR II look-through criteria. Furthermore, regulators could recognise the high and reliable liquidity and operational efficiency provided by CCP cleared repos and allow insurance undertakings to utilise securities designated to cover pools in CCP cleared repos. This would not only strengthen the resilience of insurance undertakings but also support overall market stability as fire sales become less likely.

The success of sponsored repo clearing in the US with more than 1,900 buy-side connected entities and daily trading volumes in excess of USD 300bn indicates that CCPs can play an important role in the collateral transformation for the buy-side.

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.

Hybrid direct access / sponsored access models (Facilitated Direct Access models) are a relatively new development in the EU and mostly built along the lines of established EU interbank and client clearing models. Facilitated Direct Access is available for OTC IRS and Repo at Eurex Clearing. Clients are legally obliged to meet margin requirements as with all CCP cleared transactions in the EU. As alluded to in our previous answers, a small, but growing number of pension funds, insurances and small banks are utilizing this model.

In comparison, the highly successful sponsored repo clearing model at DTCC FICC with more than USD 300bn of daily cleared repo notional does not require for sponsored members to meet a CCP cleared margin requirement. Hence, the operational burden for buy-side to connect to the CCP and sponsoring banks is greatly reduced. It is also noteworthy that a much greater variety of buy-side entities is active, e.g. Money Market Funds and Hedge Funds.

Please refer as well to our answer to question 2 under section 1a in this context elaborating on our suggestions as to how the adoption of access models in the EU could be facilitated.

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 11.1 Please indicate which incentives should be introduced:

5000 character(s) maximum

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

Please refer to our response in section 1a Clearing obligation for PSAs – question 2.

Question 11.2 Please explain your answer to question 11 and Q11.1, 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 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 12.1 How could that be achieved while at the same time properly catering for the risks of repo transactions?

Please explain your answer providing, where possible, quantitative evidence and/or 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.

The capital treatment for repos and reverse repos, referred to collectively as 'repos', is comprehensively covered under the CRR and the provision of collateral transformation services impact a range of measures including RWAs, Leverage Ratio, liquidity coverage ratio (LCR) and net stable funding ratio (NSFR).

The risks in repo transactions are addressed in the RWA requirements through supervisory volatility adjustments applied to the collateral, where the regulation specifies minimums based on a number of factors. Our experience suggests that those minimum supervisory volatility adjustments are treated as fixed inputs rather than regulatory minimums in the capital calculations. We would therefore encourage supervisors to ensure that where banks apply the regulatory minimums, they have conducted robust analysis to support this practice and/or be required to apply more conservative volatility adjustments in line with historical experience.

Furthermore, we would highlight that our experience suggests that firms are reluctant to apply netting provisions if this diverges from the accounting representation in the statutory financial accounts. As the auditors of statutory accounts may have numerous, and sometimes peripheral, reasons for requiring a gross representation of cash payables and receivables which would otherwise be nettable under the Leverage Ratio regulation, we would welcome clarification from regulators that divergences can be acceptable.

The NSFR may also be put forward by some market participants as discouraging the provision of collateral management services. We would highlight that the high level NSFR framework treats all financial counterparties (incl. CCPs) in the same way and does not give due consideration to cleared repo markets. As an example, Eurex GC Pooling is a highly efficient and stable funding market infrastructure that has evolved largely independent of regulatory drivers, and has proven to be remarkably resilient in periods of crises. While we would not advocate overarching changes to the NSFR framework, we believe some available stable funding benefit should apply for short term cleared repo transactions rather than the blanket 0% currently applicable. This small change to the NSFR would go a long way in reinforcing confidence in the sustainability of collateral management services.

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.

Please refer to our response in section 1a Clearing obligation for PSAs – question 2 as well as question 4.2.

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

Question 15.1 Please explain the reasons providing, where possible, quantitative evidence and examples.

Please also consider/explain any impact on investor protection:

5000 character(s) maximum

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

As mentioned in our response to section 1a question 2, the UCITS counterparty exposure limits do not reflect the fact that exposures to a CCP are substantially less risky than to other financial counterparties, nor do they recognize that a CCP becomes the buyer and seller to all centrally cleared trades and thereby hit the limit much faster than other counterparties. Consequently, these limits greatly hinder the uptake of risk reducing and efficient direct repo and OTC clearing in the EU by buy-side entities. As there is only a single combined limit for both asset classes, buy-side entities could also quickly face the choice to either adhere to regulatory counterparty limits or to meet the mandatory clearing obligation for OTC IRS although direct access clearing models are compliant with the clearing obligation.

In order to avoid policy inconsistencies with other measures aimed at incentivizing central clearing (such as the 2% risk weight for qualifying CCPs under the CRR for banks), CCP cleared transactions should be excluded from counterparty exposure limits for UCITS. At the very least, a specific treatment with a higher threshold for CCP cleared transactions also allowing for netting of exposures from multiple centrally cleared products should be introduced in order to clearly distinguish these transactions from non-centrally cleared transactions.

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.

Currently, there are public entities that already voluntarily clear their repo and IRS contracts at EU CCPs. It has been observed that public entities are attractive trading counterparts for global and regional dealers. A higher participation of public entities would contribute to the diversification of CCP membership and increase the liquidity of EU CCPs' clearing services, thereby making their offering even more attractive. It would be a clear signal and potentially a "pull factor" to the market, if more EU based public entities such as development banks or state treasuries would start voluntary clearing within the EU. This would not only bring efficiency gains but also improvements on the financial stability end. In this context, public entities such as the German and Dutch state treasury agencies, KfW and BPI France who have chosen Eurex Clearing for IRS clearing, are leading the way.

In addition, the transmission of monetary policy could be greatly improved if the ECB were to conduct monetary operations also via the CCPs as commercial banks could more efficiently manage liquidity. Furthermore, more central banks could conduct their portfolio management activities via CCP and support further standardisation and collateral mobility across the EU.

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.

Currently, there are public entities that already clear their repo and IRS contracts at EU CCPs such as Eurex Clearing voluntarily. In addition to the general benefits of central clearing in terms of reduced credit and counterparty risk as well as increased capital and netting benefits, Eurex Clearing is offering access to central clearing or public entities. Depending on the specific case, public entities may either connect as a regular clearing member or as a client of a clearing member.

Some public entities and other market participants may choose to access central clearing via access models, which allow market participants to benefit from a centrally cleared environment, like significant capital efficiencies. In case of access via ISA Direct, which allows direct CCP access facilitated by a clearing agent, the agent would cover the obligation to provide the default fund contributions and to participate in the default management process. On behalf of the client, the clearing agent may also ensure the daily settlement of payment and delivery obligations.

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.

Please refer to our previous answer.

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.

Please refer to our answer to question 2.1.

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.

Please refer to our answer to question 2.1.

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.

Please refer to our answer to question 2.1.

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 4.1 Please describe your activity/the activity of these entities in terms of:

	Activity
products	<p>OTC IRS, repo</p> <p>[please note however that we do not have data available for ETDs as Eurex Clearing does not have the information where the clients are organized in a net omnibus accounts as the CCP cannot identify client specific information, which is the dominating client clearing model for ETD]</p>
currency denomination	EUR
average monthly volumes (if possible)	<p>Total OTC IRS cleared volume (2021): 266.41 billion EUR (0.8% of OTC IRD and 3.3% of OTC Swaps)</p> <p>Average initial margin (2021) in relation to OTC IRS: 2.48 billion EUR (13% of total)</p> <p>Average monthly cleared cash repo notional (front leg) in 2021 amounted to approx. 277bn EUR (approx. 27% of total)</p>

**Question 4.2 [additionally for CCPs, Member States' public authorities]
Please provide more information regarding these entities (Type of entity?
From which Member State?):**

5000 character(s) maximum

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

For OTC IRD we saw the onboarding of 2 new public entities in 2021 at Eurex Clearing with a unique LEI code (note however that there is the possibility of having multiple clearing set-ups under the same LEI), reaching a total of 12 unique public companies with 11 of them having cleared at least one trade throughout 2020/21 (92% of total). Those clients ranging from state treasuries, state-owned banks, state development agencies are based predominantly in Germany, followed by Netherlands and France.

Further, there are 10 public sector entities which are currently clearing repos at Eurex Clearing (including state treasuries, development banks, central banks and local authorities).

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 5.1 Which transactions are these?

	OTC	ETD	Both	Don't know - No opinion - Not applicable
Credit derivative contracts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Equity derivative contracts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interest rate derivative contracts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Foreign exchange derivative contracts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Commodity derivative contracts and others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer to question 5.1:

5000 character(s) maximum

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

In relation to our answer to question 5: We have information on the OTC IRS and repo transactions which public entities voluntarily clear with Eurex Clearing. However, please note that we do not have any information about the proportion of centrally cleared transactions of all transactions by public entities. Furthermore, we do not have any data on public entities' centrally cleared ETD volumes as market participants are using predominantly net omnibus accounts, where no specific client information is visible to the CCP.

Question 5.2 Why do they/you only clear some transactions (and the mentioned ones in particular)?

5000 character(s) maximum

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

Where they/you do clear voluntarily, please describe the activity in terms of:

	Activity
products	1) OTC IRS 2) Repo
currency denomination	EUR
average monthly volumes (if possible)	1) The average OTC IRD cleared volume per month saw a 23% increase over the past two years, jumping from 18 billion EUR in 2020 to 22 billion EUR in 2021, with more than 70% coming from Germany. The average daily initial margin on the other hand saw a slight decrease from 2.8 billion to 2.5 billion EUR. 2) Public sector entities cleared 277bn EUR of repo cash notional in centrally cleared repos at Eurex Clearing per month in 2021.
[if you are a CCP] the share of public entities clearing per CCP and product	1) The share of the OTC IRD clearing volumes for the public entities at ECAG was at 0.7% and 0.8% respectively for 2020 and 2021, if compared to the total OTC IRD products, whereas it lies at around 3.4% if compared to OTC swap products (excluding FRA). The IM share for both years was at 13% of the total. 2) The share of public sector entities in centrally cleared repos at Eurex Clearing amounted to approx. 27% of total cleared repo cash notional in 2021.

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.

Please refer to our previous answers. Currently, there are public entities that already clear their repo and IRS contracts at EU CCPs such as Eurex Clearing voluntarily.

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.

Currently no public entity uses a sponsored model arrangement, but as outlined in question 2.1 such set-up would be a solution which also could be used by public entities should they not be able to access central clearing directly or through a general clearing member.

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.

Similar to the treatment of private entities, we believe that public entities which exceed certain exposure levels should be encouraged to clear their business in order to contribute to the attractiveness of the EU market environment and for systemic risk considerations. Please note that if the public entity does not centrally clear, the private counterpart does not centrally clear such transaction either.

Please also refer to our answer to question 1 above.

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 checked="" 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 checked="" type="radio"/>
The size of the public entity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The mission of the public entity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>
Other	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify to what other public entity/ies you refer in your answer to question 16:

5000 character(s) maximum

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

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.

Similar to the treatment of private entities we believe that public entities which are above a certain exposure level should be encouraged to clear their business in order to contribute to the attractiveness of the EU market environment and for systemic risk considerations. Please note that if the public entity does not centrally clear, the private counterpart does not centrally clear such transaction either.

Please also refer to our answer to question 1 above.

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.

As outlined in our response to question 16.1, generally, similar to private entities, very small public entities in terms of their activity measured by open risk exposures should be granted exemptions from central clearing.

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.

Generally, all options are available for public entities. Please refer to our answer to question 2.1.

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 checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>

Conflict of interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" 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.

36% of the OTC IRD trades originate from Bloomberg (35% Netherlands and 5% UK), 17% from Tradeweb (Netherlands) while 47% from MarkitWire.

Multiple public sector entities already execute repo transactions very actively at Eurex Repo (MTF) which are consequently centrally cleared at Eurex Clearing. For example, repo transactions traded by public sector entities reached EUR 3,332 billion (front leg cash notional) for the whole year 2021.

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.

An extension of the clearing obligation or indirect incentivisation of central clearing should be assessed holistically for all FX derivatives in general and FX derivatives with physical delivery in particular.

As per BIS 2019 figures, the global FX market accounts for \$6.6 trillion average daily traded notional. Thereof, deliverable FX swaps (\$3.2 trillion) and FX forwards (\$0.7 trillion) together account for \$3.9 trillion daily. Roughly 42% are traded between reporting dealers, 51% between dealers (D2D) and other financial institutions (D2C), and 7% between dealers and non-financial customers (D2NFC). Ca. 55% of all FX trading is reported from European participants. As a result, the daily exposure from deliverable FX swaps and FX forwards stemming from financial participants (D2D & D2C) in Europe can be estimated as \$1.75 trillion per day.

The counterparties of deliverable FX derivatives transactions are subject to various risks, including but not limited to settlement risk and counterparty credit risk as the major ones to be considered and managed. The CLS settlement system reduces settlement risk by managing a central bank money PvP system to avoid the Herstatt risk happening in 1974. However, not all currencies are eligible for CLS settlement and not all eligible trades are submitted to CLS. As of December 2021, ca. \$1,377bn FX swaps notional and \$95bn FX forwards notional were submitted to CLS, representing ca. 37% and 13% of respective global BIS volumes. This implies that 63% of all swaps and 87% of FX forwards remain subject to bilateral settlement risks besides the counterparty credit risk.

Counterparty credit risk can be mitigated, e.g., by exchanging collateral via CCPs or bilaterally. CCPs collect both initial and variation margin for all cleared transactions based on a portfolio's risk characteristics and defined procedures, thereby safeguarding financial stability. Under uncleared margin rules (UMR), counterparties of a trade are required to exchange collateral bilaterally under certain conditions. While deliverable FX swaps and FX forwards count towards the average aggregate notional amount (AANA), they remain exempt from bilateral initial margin requirements under UMR (in contrast to, for example, non-deliverable FX forwards, OTC FX Options and the interest rate component of Cross Currency (XCCY) Swaps which are subject to bilateral IM requirements but excluded from any clearing mandate while the FX risk is exempt from UMR entirely). This leads to uncollateralized bilateral counterparty credit risk exposure if the transaction parties are not exchanging collateral on a voluntary basis.

- 1) In summary: Overall size of the global FX Derivatives market: \$6.6 trillion daily.
- 2) FX Spot transactions: \$2.0 trillion daily
- 3) FX derivatives subject to bilateral IM (i.e., NDFs, FX Options, interest rate risk component of XCCY Swaps) under UMR to manage counterparty credit risk: \$0.7 trillion daily
- 4) Size of deliverable FX transactions exempt from UMR and, hence, largely exposed to counterparty credit risk: \$3.9 trillion daily.

The combination of missing regulatory oversight to manage the counterparty credit risk and the settlement risk causes not only a holistic risk for the financial stability, but it also leads to an disadvantageous market structure for CCPs to offer centrally cleared service solutions in the deliverable FX market. It encourages market participants to leave their deliverable FX transactions uncleared to reduce funding requirements. As a result, deliverable FX forwards and FX swaps remain uncleared and leave market participants largely exposed to counterparty credit risk and settlement risk when settled outside CLS.

This current regulatory regime has therefore led to an unlevel playing field in terms of deliverable FX clearing relative to the bilateral market. Central clearing of deliverable FX swaps and FX forwards in connection to CLS as settlement location reduce systemic financial risks and increase financial stability. The regulatory framework should therefore provide economic reason to transition into a cleared environment rather than providing economic incentives to leave transactions uncleared. This might include the extension of bilateral IM requirements to deliverable FX swaps and FX forwards under uncleared margin rules or, as ultima ratio, a clearing mandate for these products.

As regards a potential clearing obligation for repo, please refer to our response to question 2.1.

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 type="radio"/>	<input checked="" type="radio"/>
Repos	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other Interest Rate Derivatives (e.g. referring the new risk free rates)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other credit derivatives	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Foreign Exchange Derivatives	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.

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.

Regarding FX derivatives, please refer to our response to Question 1.

Currently, EU securities financing markets are fragmented negatively impacting price formation and liquidity. Meanwhile, the introduction of margin requirements for uncleared derivatives and the mandatory clearing obligation for other products require reliable access to liquid repo markets. CCP cleared repo markets allow for standardization and risk mitigation and help overcome market fragmentation. A large share of European interbank short-term repo funding has moved to EU domiciled CCPs over the last 15 years. However, buy-side to sell-side repo transactions remain mostly uncleared in the EU. In contrast, in the US, a significant share of short-term US treasury repos is now centrally cleared by banks and buy-side institutions improving access to funding for buy-side and reducing balance sheet costs for dealers. E.g. approx. 1,900 buy-side entities clear US treasury repos through DTCC FICC’s sponsored repo program. Further, there is a debate ongoing in the US to potentially introduce a mandate to centrally clear US treasuries due to liquidity issues observed during the peak of the Covid-19 pandemic. Therefore, the EU could consider to mandate CCP clearing of repos on certain assets for some market participants which could help to overcome the fragmentation of EU securities financing markets.

As regards additional IRD we believe that the most relevant OTC IRD currencies systemically relevant to the EU are covered by the clearing obligation. We welcome the steps that have already been taken to update the clearing mandates to the new risk free rates in order to reflect the progress of the IBOR reform. In this context, we would highlight the importance of including all the new risk free rates under the clearing obligation in line with the progress made in the IBOR Reform with a view to protecting the integrity of central clearing and avoiding a shift back to the bilateral space.

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.

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 4.1 Please specify in which cases providing, where possible, quantitative evidence and examples, and explain the rationale to do so:

5000 character(s) maximum

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

From a market infrastructure perspective one can observe that e.g. FX derivatives as well as dealer-to-client repo transactions which are available in a clearing environment are not centrally cleared today. Primary reasons are that the economic treatment of bilateral transactions is superior to centrally cleared transactions e.g. exemptions from bilateral margin obligations. For more details, please refer to our responses to questions 1.1 and 2.1 in this section.

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 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

Please explain how it should be clarified 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.

As it relates to the coverage of both non-financial and financial counterparties (NFCs and FCs) under the clearing obligation, we would like to use this question to share a broad observation on the clearing threshold methodology for interest rate derivatives (IRD). Whilst fully supporting the proportional treatment of smaller market participants and NFCs in the EMIR Refit threshold methodology, we note that a number of EU-domiciled investment funds may fall to a large degree below the clearing obligation thresholds. This outcome can be attributed to two factors:

(a) usually, the profile of such market participants is characterized by low turnover which may enable them to operate below the clearing thresholds despite holding significant risk exposures over longer periods of time; and

(b) the current methodology for the threshold calculation exempts some Category 3 counterparties from the calculation of the thresholds on a group level, allowing them to measure their activities on an individual fund basis, which leads to a situation that only very large funds are falling under the clearing obligation.

Regarding (a), the current methodology is measuring the thresholds based on turnover volumes. However, turnover volume may not be the optimal metric to calculate the thresholds. It could be observed in the IRD space that even small turnover volumes can be associated with relatively significant risk exposures. In our view, the level of risk market participants bring to the market should be the main criterion for assessing the appropriateness of the clearing thresholds. While it is widely acknowledged that EU based asset managers do not have significant turnover, looking at such entities more from a risk exposure perspective would likely be more prudent to assess their relevance for the overall system. Therefore, in order to appropriately reflect risk exposures in the clearing mandates, we suggest adapting the threshold methodology. For instance, one could use risk metrics such as initial margin levels for the threshold calculation.

Further, there may be merit in considering aligning the thresholds closer with the margin thresholds defined under the bilateral margin obligations. Regarding (b) we suggest reconsidering the current exemption and performing the assessment at the fund manager (group) level rather than the individual fund level in order to avoid an under-coverage by the clearing obligation.

We would also like to note in that context that the cross-asset thresholds, respectively the cross-asset application, should be reviewed; we support a clean, asset class specific risk-oriented threshold approach i. e. if an asset manager or NFC has a certain level of risk exposure in OTC IRD that triggers the obligation for OTC IRD, but not for any other asset class.

These changes would simplify the clearing threshold methodology and make it more risk-sensitive and consistent with the bilateral margin approach, ultimately leading to increased transparency and bringing more funds into the clearing obligation and thereby increasing the attractiveness for their counterparts.

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.

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.

In this context please also refer to our response to question 6 where we recommend a review of the threshold methodology. We believe there may be merit in considering aligning the thresholds of the clearing obligation closer with the margin thresholds defined under the bilateral margin obligations. Such an approach would simplify the methodology, ensure consistency as bilateral margin and clearing obligations would follow the same metrics, and lead to increased transparency.

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.

As mentioned in the general questions above and further outlined in Sections 2c, 2d and 2g, we would favor requiring EU based market participants to maintain an active account with an EU CCP for the relevant products in scope to support a market driven migration and ensure that EU market participants are prepared for the end of the temporary equivalence of Tier 2 third country CCPs. Under this approach, regulators would request EU-based market participants to demonstrate (a) progress in building exposure (measured in initial margin) and activity (measured by cleared volumes) and activity with an EU CCP and (b) the robustness of their plans against the risk scenario rather than setting quantitative target levels to define an actively used account.

Any potential punitive measures to reduce the systemic risk of reliance on Tier 2 third country CCPs should not become effective before the expiry of the temporary transition period in mid-2025 and should only be activated in case the market driven approach does not yield the intended results. Even in such scenario we recommend to take a measured, proportionate and targeted approach rather than a broad-based, undifferentiated approach. We believe a step-wise approach would be best to mitigate unintended consequences and allow a phasing in:

In the event that expectations are not met by mid-2025, the Commission could implement a framework for monitoring risks levels at Tier 2 third country CCPs and thresholds could be established which define the maximum levels of risk acceptable. As specified in section 2c below, our recommendation would be to define target levels of business to be held and conducted within the EU. Such target levels should consistently with the approach above focus on (a) the regular activity measured in cleared volume and (b) the amount of exposure measured in initial margin to define thresholds, which could be adapted over time to a target level desired by the European Commission. In order to avoid market discontinuities, maximum risk levels should be set high at the outset, and gradually reduced to the desired levels over a limited transition period.

Should the thresholds be exceeded, the Commission could empower EU and national prudential regulators to take supervisory actions through the supervisory review and evaluation process (SREP) for institutions to reduce the levels of risk. Such actions could include capital surcharges applied through Pillar 2 Requirements / Pillar 2 Guidance for institutions or other measures appropriate for firms not subject to capital requirements. Potential supervisory actions should be thoroughly assessed for first and second order market or competitive impacts. In this regard, the measurement of risk levels should include allowances (i.e. limited exemptions) for: i) market-making activities of EU dealer banks; as well as ii) client clearing activities for non-EU clients.

Having said that, we also believe that a clear communication of the EU regulators' expectations (e.g. in relation to target levels by the end of the transition period and more punitive measures), which may be activated if the market-led migration does not yield the intended results, may serve as an important signal for activation of EU based market participants.

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.

The legal framework needs to be reviewed to ensure EU clients that clear transactions at third country CCPs through clearing members based in third countries remain in scope of any measures proposed to reduce the systemic risk of Tier 2 third country CCPs.

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.

The vast majority of policy measures available to the Commission can be seamlessly applied to clearing member banks based in the EU. However, for the Commission to achieve its objectives it must also consider derivative end-clients. The Commission's policy measures will be ineffective, if EU end-clients can circumvent the requirements by clearing at Tier 2 third country CCPs through clearing members based in third countries.

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 checked="" 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 checked="" 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 checked="" type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify to what other way(s) you refer in your answer to question 3:

5000 character(s) maximum

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

European regulators have a number of avenues outside of Pillar 1 capital requirements and punitive risk weights to reduce reliance on Tier 2 third country CCPs. As highlighted in question 1, the Supervisory Review and Evaluation Process (SREP) would be the most appropriate avenue to address the issues. In this context, we note that the recently amended EBA guidelines on the SREP (EBA/GL/2022/03) call for the consideration of the proportion of transactions to CCPs established in third countries and of how any excessive exposure to non-EU CCPs is reduced. Through the SREP process, regulators could target those firms and those specific business activities that make the highest relative contributions to systemic risk of Tier 2 third country CCPs. Where excessive risk levels at Tier 2 third country CCPs are identified, these could be addressed with supervisory actions such as capital surcharges applied through Pillar 2 Requirements / Pillar 2 Guidance for institutions or other measures appropriate for firms not subject to capital requirements. The flexibility embedded in the SREP framework allows prudential regulators to take a proportionate approach to addressing the issues.

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.

Please see question 1.

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.

The proposals thus far have leaned towards punitive capital measures rather than incentivization. The key drivers of clearing at Tier 2 third-country CCPs relate to several factors: multicurrency netting, global booking models of international banks, and the CCP basis. However, Initial Margin costs are at the center of each of these drivers, and more consideration needs to be given to incentives around Initial Margin. In a bank, the trading desk is charged funding costs (excl. risk and capital costs) of between 50bps and 150bps, although banks actually pay 50bps on excess reserves deposited at the ECB. Under the TLTRO program, the ECB pays 100bps to banks, if they borrow for the purpose of lending into the real economy, hence we would suggest a similar (time-limited) scheme to incentivize a switch to clearing at EU CCPs during the transition period. If Initial Margin for the switch trades can be funded at favorable rates during the transition, this could be reflected in the spread and would reduce the costs of the switch as this would be amortized over time. Alternatively, the cash could be held during the transition without having to put through the P&L impact on banks' balance sheet for that period of transition. The proposal would be justified from a public policy perspective as a means to counteract the systemic risk posed by excessive reliance on ICE for STIRs and LCH for EUR OTC IRS identified by ESMA.

As regards the prudential framework, the EU has a number of avenues outside of Pillar 1 capital requirements and punitive risk weights to reduce reliance on Tier 2 third-country CCPs. Notwithstanding, to incentivize firms to increase their clearing activities with EU CCPs, the Commission could consider the application of a temporary preferential risk weight of 1% (reduced from 2%) for house cleared transactions and the CCP leg of client-cleared transactions in the RWA calculations of clearing members risk towards EU CCPs.

Another suggestion is to temporarily reduce the alpha factor for credit exposure calculations under SA-CCR to 1.0x (from 1.4x) for house cleared and client-cleared transactions (client and CCP legs) at EU CCPs in the RWA and Leverage Ratio calculations of clearing members.

The preferential risk weight and alpha factor reduction would only be applicable during the three year transition period, following which they should revert to the current standards in the CRR.

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.

We consider the risk of unintended consequences of policy measures to reduce the dependence on Tier 2 third country CCPs as relevant. One of those risks is that participants could relocate clearing to other third-country jurisdictions in case a higher capital requirement on excessive exposures to Tier 2 third country CCPs is imposed. The pervasiveness of global booking models and the non-level playing field across jurisdictions, combined with the intense competition in financial services means that financial activity can migrate very easily to lower cost jurisdictions, resulting in a race to the bottom. For this reason, we reiterate that policy responses should be measured, proportionate and risk sensitive.

As highlighted under question 1, we would therefore prefer a market driven migration until mid-2025 which could be supported by requiring EU market participants to maintain an active account with an EU CCP (as outlined in the following sections in detail). Any potential punitive measures to reduce the systemic risk of reliance on Tier 2 third country CCPs should only be considered after the expiry of the temporary transition period should the market driven approach not yield the intended results. Even in such scenario we recommend to take a measured, proportionate and targeted approach as outlined above rather than a broad-based, undifferentiated approach.

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.

Since the announcement of policy intentions to reduce the systemic risk to third country CCPs, substantial progress has been made on the issue. While the progress may not be immediately visible in the key performance measures, the awareness and activities in response to the policy intentions range from the back-office through to the boardrooms of banks. As the policy responses evolve to accelerate progress, it is important that responses are proportionate and targeted, so as to minimize second order impacts.

Macroprudential tools are broad-based in nature and impact competitiveness for the benefit of broader financial stability. For this reason, careful evaluation is necessary so as not to directly or indirectly doubly penalize those firms which have already moved significant business in line with the Commission's objectives.

While macroprudential tools are a complementary policy response to systemic risks, the objectives of the Commission could be much more effectively and efficiently achieved with the suite of available microprudential tools as outlined in the previous section.

Generally, to achieve broader financial stability objectives, (macroprudential) policies around clearing and policies around the non-cleared world should be developed hand in hand. Such alignment would help to set cohesive incentives structures and prevent unintended outcomes where only one part is addressed or both parts are addressed with gaps or inconsistently.

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.

In line with the response to question 1, we would not support a macroprudential buffer as we do not envisage a design of a buffer that would be targeted enough to address market participants' varying levels of risk at Tier 2 third country CCPs and to minimize second order impacts, e.g. doubly penalizing those firms which have already moved significant business. The availability of macroprudential tools extends beyond buffers, and other macroprudential tools could deliver more effective outcomes. Our preference would be to focus on micro-prudential measures that address the specific drivers, and with minimal scope for unintended consequences.

In this context, we would reiterate our general recommendation (see section 2a) to defer the application of any planned punitive measures to reduce the systemic risk of reliance on Tier 2 third country CCPs until the expiry of the temporary transition period in mid-2025, and to only activate such measures in case the market driven approach does not yield the intended results.

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.

We would prefer a second active account approach (as explained in our responses under section 2g) under which EU-based market participants efforts to prepare for the end of temporary equivalence to UK CCPs in mid-2025 would be scrutinized by their respective regulators. Under this approach, regulators would request EU-based market participants to demonstrate (a) progress in building exposure (measured in initial margin) and activity (measured by cleared volumes) with an EU CCP and (b) the robustness of their plans against the risk scenario rather than setting quantitative target levels to define an actively used account.

In case such an approach would not lead to the desired result when the transitional period expires, our recommendation would be to define target levels of business to be held and conducted within the EU. Such target levels should consistently with the approach above focus on (a) the regular activity measured in cleared volume and (b) the amount of exposure measured in initial margin to define thresholds, which could be adapted over time to a target level desired by the European Commission.

If such thresholds are exceeded, EU and member state regulators should be empowered to take supervisory actions through the supervisory review and evaluation process (SREP), which could include capital surcharges applied through Pillar 2 Requirements / Pillar 2 Guidance for institutions or other measures appropriate for firms not subject to capital requirements (as also described in our response to section 2a).

Nevertheless, we would like to highlight again that punitive measures and target levels as outlined in sections 2a and 2c should only be activated if the approach supporting a market driven migration mentioned above did not yield the desired result. Even in such scenario we recommend to take a measured, proportionate and targeted approach out outlined above rather than a broad-based, undifferentiated approach. We believe a step-wise approach would be best to mitigate unintended consequences and allow a phasing in.

Having said that, we also believe that a clear communication of the EU regulators' expectations (e.g. in relation to target levels by the end of the transition period and more punitive measures), which may be activated if the market-led migration does not yield the intended results, may serve as an important signal for activation of EU based market participants.

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.

Exposure reduction targets would need to differentiate between clearing members house activity and activity of clients. Please refer to our response to question 1 for our preferred approach.

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.

As outlined in detail in our answer to question 1 above we are of the view that only if other measures supporting a market driven migration fail, exposure reduction targets (followed by supervisory measures such as higher pillar 2 capital requirements or other measures appropriate for firms not subject to capital requirements where the targets are not met) would be appropriate for all product types listed above.

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 checked="" 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 checked="" 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 checked="" 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.

As outlined in our answer to section 2a question 1 as well as question 1 above, in case target levels or even more punitive measures are deemed necessary after the transition period expiring in mid-2025, we believe a step-wise approach would be best to mitigate unintended consequences and allow a phasing in. Having said this, the exposure reduction target should start with a substantial amount under the assumption that market participants are granted three more years to build exposures within the EU in a market driven approach.

In terms of building capacity within the EU, we believe that the offering for Euro denominated IRS is to a large degree available, while service improvements are part of Eurex Clearing's regular business development activities, we have not heard of any roadblocks which would prevent building out Euro exposures at Eurex Clearing.

With regards to the Euro denominated STIR products we agree that liquidity needs to be built within the EU. However, Eurex Clearing already makes such product available and has connectivity to largely all relevant players in that market. A logical next step for us would be to focus on building liquidity in that product, if the European Commission would define certain requirements in terms of maintaining an active account or, in case necessary at a later point in time, exposure reduction targets.

Regarding other measures to foster the build-up of liquidity in Euro denominated STIR products within the EU please also refer to our answer to section 7b.

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.

We have outlined our preferred approach in our response to question 1. Any potential punitive measures to reduce the systemic risk of reliance on Tier 2 third country CCPs should not become effective before the expiry of the temporary transition period in mid-2025 and should only be activated in case the market driven approach described above does not yield the intended results. Even in such scenario we recommend to take a measured, proportionate and targeted approach rather than a broad-based, undifferentiated approach. We believe a step-wise approach would be best to mitigate unintended consequences and allow a phasing in:

In the event that expectations are not met by mid-2025, the Commission could implement a framework for monitoring risks levels at Tier 2 third country CCPs, and thresholds could be established which define the maximum levels of risk acceptable. Our recommendation would be to define target levels of business to be held and conducted within the EU. Such target levels should focus on (a) the regular activity measured in cleared volume and (b) the amount of exposure measured in initial margin to define thresholds, which could be adapted over time to a target level desired by the European Commission. In order to avoid market discontinuities, maximum risk levels should be set high at the outset, and gradually reduced to the desired levels over a limited transition period.

Should the thresholds be exceeded, the Commission should empower EU and national prudential regulators to take supervisory actions through the supervisory review and evaluation process (SREP) for institutions to reduce the levels of risk. Such actions could include capital surcharges applied through Pillar 2 Requirements / Pillar 2 Guidance for institutions or other measures appropriate for firms not subject to capital requirements.

Having said that, we also believe that a clear communication of the EU regulators' expectations (e.g. in relation to target levels by the end of the transition period and more punitive measures), which may be activated if the market-led migration does not yield the intended results, may serve as an important signal for activation of EU based market participants.

Finally, we would like to point to our answer to section 2a question 4 where we provide some suggestions for incentivization rather than punitive measures.

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.

DBG welcomes that the Commission is taking into account the level playing field dimension for EU market participants, alongside the broader financial stability and monetary policy objectives, when reflecting on the way ahead.

With respect to the Euro OTC IRS market, EU market participants can already clear these transactions through an EU CCP at virtually the same terms offered by the incumbent CCP in the UK. Eurex Clearing offers bid-offer spreads comparable to those of LCH, a basis oscillating around zero. Both are key indicators of deep liquidity and same execution conditions for the end-clients which should nullify concerns in relation to increased costs (see <https://www.eurex.com/resource/blob/143582/b6facdb2933f03ebe409b6f6b2a1db91/data/Eurex-Clearing-partnership-program-summary-otc-ird.pdf>). To the contrary, Eurex Clearing offers considerable new netting efficiencies across EUR OTC and ETD products which should be most relevant for the EU buy side clients holding a majority of their portfolios in EUR OTC IRD positions.

In this context, it should be noted that on the client level, the majority of the Euro OTC IRD risk exposures sit with the EU buy-side holding large directional and long-dated portfolios. Many of those critical Euro focused real-money investors and issuers sit within the EU already. Further, due to certain structural developments, such as the completion of the rollout of uncleared margin requirements (UMR), the expiry from clearing exemptions for key EU counterparts such as pension funds, more and more EU firms will soon move into central clearing, further deepening the liquidity pool coming from EU based market participants.

Therefore, the challenges around an unlevel playing field appear to be limited to the short-term and will become less acute over time. Competitive disadvantages may particularly arise from one-off costs linked to the migration of legacy portfolios into the EU.

We are of course mindful not to bring any competitive disadvantages onto market participants. Therefore, to avoid this level playing field issue in the short-term, we would suggest an incremental market-led approach aided by clear regulatory guidance and incentives (please also refer to our previous answers under sections 2a and 2c). The initial focus should be on the migration of Euro OTC IRD business from EU based end clients. In order to facilitate the migration of this segment, the Commission could consider a second active account requirement to ensure a shift of exposures to the EU (see section 2g for details). In addition, level playing field considerations could further be addressed by allowing exemptions from the requirement to migrate exposures to the continent. In particular, EU dealers market making business and EU clearing member client clearing services for non-EU clients could be exempted from an active account or any other requirement to clear at EU CCPs in order to allow them to participate in the currently more liquid D2D market in London. Furthermore, it is important to note in this context that dealer banks are critical to support end-client portfolio transfers through their market making business which may lead to temporary increasing exposures at UK CCPs. Following a move of end-client business and banking books further deepening the EU liquidity pool, inter-dealer hedging business (or trading book of global and regional dealers) will most likely also migrate into the EU.

Beyond regulatory measures, we reiterate that EU based market participants should also be positively incentivized to clear at EU CCPs. In this context, we refer to our proposals (see section 2a question 4) regarding a dedicated ECB support scheme providing market participants funding for the initial margin for switch trades at attractive conditions as well as temporary prudential incentives.

With such an approach, including both targeted regulatory measures and positive incentives, the EU regulators can both achieve their regulatory objectives and strengthen its domestic clearing capacities and ensure a level playing field for EU market participants.

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.

Please refer to our answer to question 1 and section 2g in relation to our preference for a market led approach and our recommendation to incentive clearing of Euro and Zloty denominated business of EU based clients with an EU CCP through the set-up and active use of a second account.

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.

Please refer as well to our response to question 1 and section 2g. We believe that end clients can be best mobilized through the set-up and use of an active account with an EU CCP. Please refer as well as to our general recommendations how to facilitate clearing solutions for clients not subject to the CRR in sections 1a and 1b. On the aspect to positive incentives please refer to our suggestions on initial margin funding and potential central bank measures targeted at Euro cash held as initial margin at EU CCPs – for more details please refer to our response to question 4 in section 2a.

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.

Eurex Clearing is generally not in favor of imposing further regulatory obligations, we would like to see a market driven approach to lower Euro exposure to third countries. Considering that EU entities might be counterparties to those legacy trades there would be a) complexities and cost implications for those European entities and b) an additional regulatory burden for said entities compared to their third country peers. Overall, given the limited impact this would have on EUR exposure to third countries we are in favor of having a permanent exemption.

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.

Eurex Clearing's standpoint on this topic is that any kind of exposure/portfolio transfer onto an EU CCP, be it non-cleared trades or trades against a Tier 2 CCP should be market driven, not forced through regulatory measures. The regulations in this space are from our standpoint sufficient and appropriate. Cost/benefit of clearing legacy trades should remain as is.

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.

A compression obligation for those legacy trades would mean reduction of operational complexity for the market participants but would also have additional cost implications for the compression activity as such. On the other hand, there might be potential savings would it come to a transfer onto an EU CCP. Overall, this should be for market participants to decide whether portfolio compression makes sense or not. We are not in favor of an obligation.

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.

For bilateral trades, Eurex Clearing offers a straightforward backloading process for submitting existing trades to clearing that were executed in the past. Trade backloading can be done in a business as usual process for IRS trades which are not older than 10 TARGET business days. Clearing Members can enter backdated trades at any time during the service availability hours and, provided that sufficient margin is available, these will be novated in exactly the same manner as new trades.

Generally, a transfer of a portfolio always requires the collaboration of all parties involved – from the CCPs, Clearing Members and clients. It should be noted in this context that dealer banks are critical to support the portfolio transfers of EU end-clients through their market making business. As outlined in our answers to sections 2c and 2g in more detail, this is why in our view, the initial focus should be on the migration of portfolios from EU end clients while dealer banks' market making activity or client clearing services for non-EU clients should be exempted.

Currently, there are already several tools available in the market to facilitate the transfer of portfolios, albeit they have not been designed for exactly this purpose. For example, through execution platforms such as Tradeweb and Bloomberg. With these tools, portfolio sizes to be transferred are typically limited to a maximum of 200 line items. Interdealer Brokers can facilitate a similar service.

Eurex Clearing is working on a tool in conjunction with a third party that aims to minimize the margin impact overall and allow for switches of larger portfolios. Launch of this tool is planned for September 2022 latest. However, it will still apply that interaction with Tier 2 third country CCPs will be required.

Finally, there is uncertainty on P&L/tax impact (i.e., realization of unrealized profits/losses leading to significant balance sheet impact) on reduction of OTC IRD exposure from third-country CCPs towards CCPs within the EU, which leads to a situation where market participants may not consider to further transfer exposure. In order to facilitate the execution of a CCP portfolio transfer without an unwanted accounting (P&L) impact for the market participants, we would recommend an EU-wide harmonization of hedge accounting rules. Please refer to our answer to section 2h below for a detailed description and recommendation how to remove the barriers that currently hamper the transfer of portfolios subject to hedge accounting.

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.

We are strongly in favor of a market driven migration and consider the three years granted under the prolonged equivalence decision for UK CCPs to be a reasonable timeframe to achieve the regulatory objective of reducing reliance on Tier 2 CCPs. While we agree that additional regulatory guidance may be useful in the first instance to support a market-driven migration (e.g. see our answer to section 2d question 1 as well as our comments on the “active account” in section 2g below), we believe that an amendment of Article 5 EMIR effectively forcing EU market participants to clear in the EU should only be seen as last resort and would not be proportionate at this point of time. A comprehensive obligation to clear in the EU should only be considered, in case less restrictive measures (e.g. active account, incentive-based measures) have been implemented and demonstrably failed to yield the desired result of reducing reliance on Tier 2 CCPs.

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.

As a measure to incentivize market participants subject to the EMIR clearing obligation to appropriately prepare for the end of the temporary equivalence of UK CCPs in mid-2025 and to overcome the “first mover disadvantage” mentioned in our response to section 2d question 1, the requirement for EU market participants to set up an actively used account with an EU-based CCP with regard to the relevant products would be DBG’s preferred policy option. Such an approach would ensure a sustainable reduction of exposure towards UK CCPs through a) supporting a primarily market driven migration while b) , avoiding business discontinuity as well as financial stability risks associated with a market wide obligation to move large positions in a relatively short period of time when the temporary equivalence will expire in mid-2025.

As explained in detail in section 2d, the initial focus should be on the migration of business from EU end clients, while we would recommend exemptions for certain services provided by dealer banks who are engaged in global competition like their market making activity or client clearing services for non-EU clients in order to address concerns regarding global competitiveness of such firms. Furthermore, it is important to note in this context that dealer banks are critical to support end-client portfolio transfers through their market making business which may lead to temporary increasing exposures at UK CCPs.

As outlined in sections 2a and 2c, with regard to measuring if the account with EU CCPs is “actively” used, DBG would prefer if EU based market participants would demonstrate to their respective prudential regulator that they appropriately prepare for the end of the temporary equivalence of UK CCPs in mid-2025 by demonstrating (a) progress in building exposure (measured in initial margin) and activity (measured by cleared volumes) with an EU CCP and (b) the robustness of their plans against the risk scenario rather than setting quantitative target levels to define an actively used account.

In case such an approach would not lead to the desired result, our recommendation would be to define target levels of business to be held and conducted within the EU. Such target levels should consistently with the approach above focus on (a) the regular activity measured in cleared volume and (b) the amount of exposure measured in initial margin to define thresholds, which could be adapted over time to a target level deemed appropriate by the European Commission.

If such target levels are exceeded, EU and member state regulators should be empowered to take supervisory actions through the supervisory review and evaluation process (SREP), including capital surcharges applied through Pillar 2 Requirements / Pillar 2 Guidance for institutions or other measures appropriate for firms not subject to capital requirements (as also described in our response to section 2a).

Nevertheless, we would like to highlight again that target levels and punitive measures as outlined in Section 2a and 2c should only be activated if the approaches mentioned above did not yield the desired result.

Having said that, a clear communication of the expectations regarding the reduction of systemic risk, e.g. target levels by the end of the transition period and more punitive measures, which may be activated if target level not being achieved, may serve as a trigger for activation of EU based market participants.

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.

From our perspective defining a minimum level of activity at this stage in time may prove difficult as different market participants have different activity and exposure profiles. As mentioned in our answer to question 1, our preferred approach would therefore be to facilitate a market driven migration monitored by prudential regulators.

As outlined in sections 2a and 2c, under such an approach, EU-based market participants would demonstrate to their respective prudential regulator that they appropriately prepare for the end of the temporary equivalence of UK CCPs in mid-2025 by demonstrating (a) progress in building exposure (measured in initial margin) and activity (measured by cleared volumes) with an EU CCP and (b) the robustness of their plans against the risk scenario above. This would allow for a client specific solution rather than a one size fits all approach.

In case such an approach would not lead to the desired result, our recommendation would be to define target levels of business to be held and conducted within the EU. Such target levels should consistently with the approach above focus (a) the regular activity measured in cleared volume and (b) the amount of exposure measured in initial margin to define thresholds, which could be adapted over time to a target level desired by the European Commission.

If such target levels are exceeded, EU and member state regulators should be empowered to take supervisory actions through the supervisory review and evaluation process (SREP), including capital surcharges applied through Pillar 2 Requirements / Pillar 2 Guidance for institutions or other measures appropriate for firms not subject to capital requirements (as also described in our response to section 2a).

Nevertheless, we would like to highlight again that target levels and punitive measures as outlined in sections 2a and 2c should only be activated if the approach mentioned above did not yield the desired result. Having said that, a clear communication of the expectations e.g. target levels by the end of the transition period and more punitive measures, which may be activated if target level not being achieved, may serve as a trigger for activation of EU based market participants.

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.

Please refer to our answer to question 2 where we recommend that the prudential regulator of the EU based market participant should monitor on an ongoing basis the progress in building up exposures at EU CCPs and having robust contingency plans rather than setting a specific minimum quantitative limit across market participants. Should such an approach not prove successful to achieve the EU regulators' objectives, our recommendation would be to predominantly focus on a) the regular activity measured in cleared volume and (b) the amount of exposure measured in initial margin to define thresholds which could be adapted over time to a target level desired by the European Commission.

Nevertheless, we would like to reiterate that such a scenario should only be activated if the client specific approach mentioned above did not yield the desired result.

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.

From our perspective, the exposure and activities of EU based clients through an account with an EU CCP itself is decisive. The account structure is a secondary factor. The account structure only matters in a situation where the progress in migrating clearing business to the continent would have to be actively monitored as client exposure cannot be identified and tracked on an individual level in an omnibus account. Therefore, please refer again to our preferred approach as outlined in question 1. Our preferred approach would therefore be to facilitate a market driven migration monitored by prudential regulators. Under such an approach, EU based market participants would demonstrate to their respective prudential regulator that they appropriately prepare for the end of the temporary equivalence of UK CCPs in mid-2025 by demonstrating (a) progress in building exposure and activity with an EU CCP and (b) the robustness of their plans against the risk scenario above, which would allow for a client specific solution.

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.

Should the requirement to ensure an active account an EU CCP be set on Level 1 which could be met either as a clearing member or by clearing via a clearing member that maintains an account with an EU CCP, this would have direct and legally binding effect on all EU based market participants, i.e. it would directly apply as well to clients. Clients themselves would thus be required to meet the active account requirement. Their prudential regulators could therefore monitor market participants' business continuity plan and progress made in building up clearing activities within the EU over time as outlined in our responses to questions 1 and 2.

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.

Please refer to our answers to question 1 and 2.

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.

From our point of view the active account should be a requirement for all EU based market participants regardless of their parent domicile. As pointed out above we would recommend considering exemptions for dealers' market making business and client clearing services for non-EU based clients. Please also refer to our response to question 1 for more details.

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.

Market participants are obliged to follow domestic and, if applied, international accounting rules / standards for OTC Derivatives held in different kind of portfolios (bank book, trading book) and herein may apply hedge accounting rules, all in sole agreement with its (external) auditor. Uncertainty exists on local accounting or tax standards and to a lesser extent on IFRS, therefore preventing a smooth and P&L/tax neutral transition of IRD positions of portfolios held in the bank book and for clients who apply hedge accounting to CCPs within the EU (i.e., whether a switch in the hedging swap transaction from one CCP to another, either via a clearing broker or directly, terminates hedge relationship and thus leads to a realization of a P&L). Given the pending uncertainty on P&L/tax impact (i.e., realization of unrealized profits/losses leading to significant balance sheet impact) on reduction of OTC IRD exposure from third-country CCPs towards CCPs within the EU, market participants may not consider to further transfer exposure. This is in contrast to EU's position whereby it is preferred to have an attractive environment allowing market participants to gradually transition their exposures from a third country CCP to an EU based CCP.

Specific clarifications/guidance, in but not limited to major EU financial centre states (e.g., France, Netherlands, Ireland, Italy, Spain, etc.), on applicable (local and international) accounting and tax standards would be required to change the status quo thus provide certainty to market participants on transfer of OTC IRD exposure from third-country (e.g. UK) CCPs to EU based CCPs.

Local Accounting Board and National Regulatory Tax authorities in Germany had proactively taken clear steps to clarify and mitigate accounting and tax consequences arising from a 1:1 portfolio transfer to EU-based CCPs by providing an interpretation guidance to the local accounting and rules under consideration that the Brexit event represents a special exogenous event of considerable magnitude and market participants might currently, due to external circumstances beyond the control of the accounting entity, be negatively impacted by transferring their OTC IRD portfolio to an EU based CCP. Against this backdrop, German Accounting and Tax Authorities are of the opinion that an execution of a CCP portfolio transfer without accounting (P&L) impact is not objectionable, at least in this special exceptional case under very strict conditions like 1:1 transfer of positions, a close temporal connection of the required individual transactions and the fulfillment of corresponding documentation and proof requirements.

The European Commission might take actions and ask Local Accounting Boards, National Regulatory Accounting/Tax Authorities and International Accounting Boards to clarify positions or provide guidance similar to the aforementioned guidance provided in Germany on removal of such barriers to ease reduction of exposures at third-country CCPs.

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.

Both Local and International (IFRS) accounting rules or standards require consistent guidance given by the relevant International and National accounting boards or National Regulatory Authorities (NRA). In addition, related tax standards or rules need to be harmonized and consistent with the accounting rules, thus NRAs setting tax standards may be required to take action, too.

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.

Referring to response to 2h question 1, there are no costs related to the outlined guidance provided by German Local Accounting Boards and National Tax Authority and provided that the European Commission takes action to ask Local Accounting Boards, National Regulatory Accounting/Tax Authorities and International Accounting Boards in EU member states to clarify positions or provide aforementioned guidance.

Pros:

- No related costs
- Removal of uncertainty on accounting and tax related standards for transfer of OTC IRD exposures from third-party CCPs to EU based CCPs in special exceptional cases
- Easy reduction of exposures at third-country CCPs
- Joint and EU harmonized approach

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.

DBG generally welcomes activities aimed at reducing risk in the market and notes that CCPs do regularly perform for example compression activities for cleared trades which are beneficial in terms of resource optimization, operational risk and default management procedures as well as reduced margin and capital requirements. In 2021, for example, there were 6 compression cycles at Eurex Clearing, compressing 9.8tn EUR notional. Nevertheless, it is important to note that compression does not reduce the risk exposure, but only results in a reduction of the notional exposure held.

Please also refer to our answer to the questions under section 2e regarding the treatment of legacy contracts and the use of compression.

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.

While acknowledging the benefits of PTRR services as mentioned in our previous answer, DBG would like to point out that the use of PTRR services cannot be perceived as a replacement of central clearing. While we believe that PTRR services should be used complementary to central clearing, DBG is skeptical about any potential exemption of trades resulting from PTRR services from the clearing obligation. As the current clearing obligation has not prevented an increased use of PTRR services until today, we would see no need to consider a different treatment with regard to the clearing obligation at this stage. Regarding legacy trades, it is our understanding that all trades concluded prior to the clearing obligation can already be compressed today in the EU using portfolio compression services. However, new trades cannot be used to change the nature of the exposure of portfolios composed of old trades and be exempt from the clearing obligation. While a number of jurisdictions such as the US, Canada, Hong Kong, Singapore and Australia have decided to clarify that legacy trades prior to the clearing obligations are exempt, no major jurisdiction has opted for an outright exemption from the clearing obligation of new trades resulting PTRRS.

Generally, we do not think that a different treatment of PTRR services under the clearing obligation in the EU would increase the appeal of central clearing in the EU. Rather, we are concerned that such an approach may lead to less trades being covered by central clearing and a weakening of clearing incentives as activities may be shifted back to the bilateral space, reversing the logic of the G20 reforms to centrally clear standardized OTC derivatives contracts and bringing them under multilateral netting and collateralization imposed by CCPs. Further, in a cross-jurisdictional context, such an approach may lead to firms avoiding local clearing requirements as the PTRR services can be employed to move exposure to an offshore or third country booking hub of choice.

For a detailed position on this topic please also refer to our response to ESMA's assessment of the treatment of PTRR services in relation to the clearing obligation, available at: <https://www.esma.europa.eu/file/55881/download?token=okz0BWLq>.

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.

Please refer to our previous response. DBG agrees with the ESRB's view and the Commission's conclusions in context of ESMA's assessment in 2020 whether or not to grant an exemption for trades resulting from PTRR services that the risks of not subjecting trades resulting from PTRR services to the clearing obligation would outweigh any potential benefits of granting an exemption to the clearing mandate.

For a detailed position on this topic, including examples, please also refer to our response to ESMA's assessment of the treatment of PTRR services in relation to the clearing obligation, available at: <https://www.esma.europa.eu/file/55881/download?token=okz0BWLq>.

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.

As a first step, participants could use risk-free or risk-based compression on their existing portfolios at Tier 2 CCPs to reduce the number of trades that will need to be offset with equal but opposing trades. Afterwards, post-trade events (PTEs) such as risk-free or risk-based portfolio compression could be used to reduce the line items at the Tier 2 CCP first, to then facilitate an operationally less cumbersome process of transferring those remnant trades and exposure across to an EU CCP.

Risk-free compression is a service that CCPs offer themselves, so no third parties would be required for that.

As the functionality of risk-based compression through third party providers works today, it cannot facilitate the transfer of one CCP to another, although in theory, this could be something that a compression provider could offer, presuming that the legal framework could be set up accordingly and the Tier 2 CCP would be willing to collaborate.

At Eurex Clearing, we have facilitated this process a number of times. Please note in this context that Eurex Clearing is constantly working on how to improve services, including new tools in order to optimise operational processes for market participants. In this context, please also refer to our comments on our new switch tool under section 2e question 5.

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 would defer to the expertise of clearing members and clients who are best suited to comment on the use of FRANDT regulation with a view to promoting the use of EU CCPs.

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.

While fully supporting the overall aim of increasing coherence of supervisory practices in relation to Art. 15 and 49 EMIR, we remain concerned that the new approach to Art. 15 and 49 EMIR procedures set out in the ESMA final report of March 2021 (ESMA70-151-3373) would not improve the existing one but would unfortunately increase complexity and duration of the process to approve the extension of products and services and changes to risk models.

First, the draft RTS lacks clearly defined and efficient timelines which are needed to prevent an excessive “time to market”. Under EMIR and the draft RTS one can broadly distinguish three steps starting with a decision by the NCA and College whether the pursued adaptations require an Art. 15 or Art. 49 EMIR procedure (step 1), leading to an assessment of the completeness of documents submitted by the CCP describing the pursued changes (step 2) and concluding with the actual assessment by NCA and ESMA and College of the pursued adaptation (step 3). Notably, neither step 1 nor step 2 are currently framed by clear timelines. In order to ensure that CCPs are able to make necessary adaptations to risk models or respond to market demand for new products and services in a timely manner, we recommend introducing clear timelines either through issuing ESMA guidelines or Q&As or by way of an amendment of the RTS.

Second, the new approach drastically expands the scope of changes which are part of operational management of the CCP to now be subject to NCA assessment to determine their relevance and potentially ESMA or college review. Generally, the Art. 49 EMIR procedure should only apply to changes to the CCP’s models and parameters that could affect the outcome of the initial authorization assessment. Nevertheless, the provisions of Art. 10 (1) of the draft RTS would require ex-ante notification and NCA assessment for any changes to models and parameters notwithstanding the frequency or severity of such changes. Even for the most routine recalibrations occurring every month or more frequently, the CCP would presumably be required to inform the NCA and to wait until the NCA has carried out its assessment whether any indicators or criteria are met before the CCP can take action, clearly impeding the operational management of a CCP, where the CCP may have to respond to a changing market environment. Subjecting even small and incremental changes or innovations to this procedure, as foreseen by the draft RTS, would place a systemic burden on European CCPs and adversely affect their competitiveness. Therefore, we would appreciate, if the application of the approval procedure to regular re-calibrations could be clarified, either through an amendment of the draft RTS currently under review by the European Commission or by way of guidelines or Q&As, with a view to ensuring an exclusion of regular re-calibrations.

To conclude, the combination of the extended scope of changes considered under Art. 15 and 49 EMIR and the partially complex and lengthy approval process impair CCPs’ flexibility and ‘time-to-market’ to enable the CCP to make adaptations necessary to run a well-functioning risk management and create a competitive regulatory environment. Further, this may translate into a huge burden on even the small and incremental changes and innovations will put on EU CCPs which, over time, may lead to a loss of competitiveness on a global scale as EU CCPs may innovate less and be positioned worse to respond to dynamically changing

market structure and its evolving environment.

An analysis of the rules and practical experience in other jurisdictions show that non-EU CCPs may introduce changes more swiftly based on a clear distinction between significant and minor changes. For instance, in the US, there is a 10-day self-certification process for any rule changes (e.g. clearing conditions) as well as a 1-day notification process for launching new products in asset classes already cleared.

For more details on our suggestions regarding EMIR Art. 15 and 49, please also refer to our response to the 2020 ESMA consultation, available at: <https://www.esma.europa.eu/file/61951/download?token=OLGIQ3d1>.

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

What other activities/services could be considered?

Please explain:

5000 character(s) maximum

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

Yes, DBG would support a faster approval procedure with a view to promote clearing within the EU. As outlined in our response to the previous question, the proposed RTS in relation to Art. 15 and 49 EMIR procedures expands the set of criteria and indicators for significant extensions which results in a complex and lengthy approval process impairing CCPs' flexibility and 'time-to-market' to make adaptations necessary to run a well-functioning risk management and create a competitive regulatory environment. Part of the challenge stems from regulators' interpretation and clear guidance to CCPs that their own analysis of any Art. 15 or Art. 49 procedure needs to be fully comprehensive and cut across entire clearing and risk framework, even when the novelty of the envisaged change is very limited and well-defined. For example, the addition of another currency to an eligible product portfolio might require some assessment of liquidity arrangements but running a whole suite of margin, stress testing and default fund analyses under both historical and hypothetical conditions for such a change seems disproportionate to the regulatory objective. Therefore, we would recommend that the Art. 15 and 49 EMIR procedure should only apply to changes to the CCP's models and parameters that could affect the outcome of the initial authorization assessment and the assessment of any new product should focus only on the novel features of the product. For new products within the class of products/services already covered by the authorization an ex-post information to the local regulatory authority and annual information to ESMA and the College should be sufficient. A clear definition of "Service" should be included to distinguish between products and services and also between core services and ancillary services.

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.

Please refer to our general comments on giving a stronger role to the EU level under Section 5b – Question 2. If authorities' responsibilities were centralized at ESMA and no other changes to the overall regulatory framework were made, certain CCPs, such as Eurex Clearing, would be subject to dual supervision where prudential regulators need to be involved for the EU CCPs' banking licenses. This would translate into an increased burden and a loss of competitiveness on the part of such CCPs.

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.

The most important aspect is to first filter minor, medium and significant change. The minor ones should be executed by the CCP on very short timelines (days) similar to the self-certification regime in the US. For the latter, the key test is whether the extension of the service has the potential to significantly undermine the overall CCP risk framework in an irreparable way. If not, a simplified path should be applied focusing on novel features and allowing for ex-post approval process. The procedures for these three kinds of changes should be framed by clear timelines (also see response to Question 1 of this section).

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.

It is reasonable to retain the criteria as proposed in the draft RTS Art. 2 (a) and (b) as they are objective, easy to understand and correlate to expansion of CCP clearing activities into a new territory. However, the criterion in Art. 2(c), i.e. new currency has a much narrower scope of impact and should be considered in a contextual setting. For instance, if a multi-currency CCP which already supports five or more currencies, intends to add a new currency, this would rather constitute a minor extension of existing (multi-currency) arrangements. If a single-currency CCP moves to support multiple currencies, such an extension may require more detailed analysis of potential impacts.

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.

EU CCPs have to switch to USD margin calls due to TARGET-2 closing times and are unable to process EUR payments late in the day. Hereby, while participants need to provide USD liquidity, the CCP needs to ensure secured placement of such USD liquidity. As EU CCPs generally do not have Fed access, they depend on the repo market and the capacity of the CCPs' counterparties to absorb such liquidity in exchange for high quality collateral. The particular challenge here is that the volume of such late USD margins fluctuates significantly. Depending on the market and participants market activities very high USD margins might need to be collected and invested late in the day. In case the repo markets cannot absorb the liquidity, unsecured overnight placements are typically the only alternative for the EU CCP. In this setup, central bank access for USD would be very useful to avoid counterparty credit risk.

Alternatively, an extended window to process EUR payments via TARGET-2 could significantly reduce the dependence on USD infrastructure and USD markets and would be of advantage for both sides, the participants as well as the CCP (see also answer on question 1.2 below).

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.

It would be beneficial to have a 24/7 possibility to settle central bank money. For EUR payments this would actually be possible by the usage of the Eurosystem's Instant Payments System (TIPS). However, as there is a cap applicable to payments, this is currently not a feasible option for CCPs. Therefore, the use of alternatives already available such as TIPS by CCPs should be facilitated as an alternative for EUR central bank money margin delivery during TARGET2 closing times. In addition, we would suggest an extension of the opening hours of the Eurosystem's TARGET2 beyond 18.00, which may be technically possible after TARGET2 and TARGET 2-Securities have been integrated later in 2022, with a view to increase the use of collateral provided to CCPs in EUR and reduce dependencies on other currencies such as USD.

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

Please specify to what other criterion/a 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.

We are of the opinion that no limitation should be imposed on the current default fund design models. Further, we do not believe that imposing a segregated default fund would help making the EU more attractive. Rather it would not add value as it precludes the possibility of cross-margining and limits the mutualization feature of central clearing.

In our perspective, a single default fund provides a better value proposition because it allows to merge risks reducing capital inefficiencies. Eurex Clearing has one joint but segmented Default Fund in place, ensuring a precise loss allocation. All layers of the waterfall follow the concept of segmentation along the liquidation groups defined by the CCP. Every liquidation group is assigned to one particular Default Fund Segment (DFS) and each Clearing Member is exposed to the risk of at least one Liquidation Group.

When liquidating a particular portfolio, only funds of the DFS assigned to the respective liquidation group may be used to cover losses, unless there is a known surplus from other liquidation groups for which the default management process has already been finished, this process is known as spill-over effect. In addition, in extreme scenarios the spill-over effect among several product classes combined in a joint default fund may help in absorbing losses that would have otherwise affected the wider market, further weakening the risk argument for segregated default fund imposition. Moreover, imposing a segregated default fund structure would not improve the attractiveness of clearing within the Union as the principal non-EU competitors already adopt this design.

Generally, the number of required default funds should depend on the structure of members, participants and their trading behavior as well as the composition of asset classes the CCP clears. It needs to take into account the default management strategy of the CCP. Therefore, a general requirement taking into account singular parameters like number of asset classes is not adequate.

We believe the choice of number of default funds should be made by the CCP after consultation of its members based on the risk profile of the CCP.

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.

While maintaining a joint Default Fund comes with additional requirements in terms of default management capabilities in default situations, a separation of Default Funds comes at the costs of significant losses in netting efficiencies and, thus, would increase Default Fund contributions. Consequently, the cost of clearing e.g. from a RWA perspective would increase substantially and reduces the attractiveness of central clearing. Especially, larger Clearing Members who are active in different markets and asset classes offered by a multi-asset class CCPs benefit from the efficiency of joint Default Funds.

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.

Please refer to our response to question 1 where we would recommend not to impose limitations to the default fund design of EU CCPs. Hence we would recommend refraining from incentives in EMIR or other pieces of EU legislation in this regard.

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.

Please refer to our answer to question 1 where we would recommend not to impose limitations to the default fund design of EU CCPs.

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.

Regarding the options for investment by CCPs, we broadly support the principles set out in EMIR and EU authorities' ambitions to make this regime as safe as possible with a view to safeguarding financial stability. Nevertheless, some targeted improvements to the provisions on CCP investment policies should be considered - especially in light of the persistently low or negative interest rate environment that adversely injects financial stability risks. Specifically, the average time to maturity of 2 years for the CCP's investment portfolio is too strict, considering the current limitation to highly liquid financial instruments the CCP can invest in according to Annex II of Commission Delegated Regulation (EU) No 153/2013 with regard to regulatory technical standards on requirements for central counterparties, and that the CCP has the possibility to mobilize the securities anytime, if needed. Therefore, we would recommend extending the average time to maturity from 2 to 5 years as well as considering non-invested funds for the calculation.

In addition, we would like to point out that there currently is a divergent level of access to central bank money for CCPs across the EU, differing between jurisdictions and depending on the regulatory status of the CCP. In some member states, CCPs are subject to banking regulation and need to hold a banking license for their access to central banks. As CCPs are different from banks and are already subject to stringent regulatory requirements under EMIR, one could ask why CCPs should have to require a banking license and adhere to banking regulation in addition. Access to central bank liquidity is essential in the interest of financial stability and integrity, especially in case of market stress. Therefore, in a scenario where EU CCPs would be allowed to access central banks without a banking license with a view to reduce complexity and further facilitate competitiveness, ensuring access to the refinancing window which we deem an important element to manage a default in a crisis situation would be required as well. In this context, please also refer to our comments in relation to the banking license's implications for the supervisory set-up under section 5b question 2.

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.

Please refer to our response to Question 1.1.

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.

We believe the potential benefits that may be created by entering into an interoperability arrangement are by far outweighed by the negative effects of entering into an interoperability arrangement in relation to derivatives.

Entering into an interoperability arrangement partially destroys the transparency created by central clearing as built up in the past years and as such may pose a threat to financial stability. The increased complexity of interconnections between market participants and CCPs would unnecessarily turn back great efforts that went into implementing the G20 commitment and creating long term financial market stability. Adding another CCP raises complexity in particular regarding Risk Management and may bring the well-designed incentive structure created by the default waterfall out of balance (please see question 5 below for further details). The added complexity that would be created by connecting different CCP ecosystems would decrease transparency for CCPs and supervisors (also addressed in answer to Question 4.1).

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.

While it seems possible that interoperability arrangements could increase liquidity in EU CCPs marginally, the overall effect is hard to quantify and thus rather uncertain. Further, considering the significant negative effects of entering into interoperability arrangement and list of unanswered questions in particular regarding the risk management of CCPs, it does not seem to be an advisable strategy to promote interoperability given the potential threat to financial stability that could be created.

Please also note that the only voluntary link that has existed so far for derivatives between London and Oslo was terminated in 2019 as the envisaged economic benefits could not be realized.

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.

Against the background of above mentioned negative effects of entering into interoperability arrangements we would also advise against interoperability arrangements for Interest Rate Swaps.

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.

As outlined above we would like to reiterate that we advise against interoperability arrangements as it raises key questions in risk management. The default waterfall of a CCP has created a well-functioning and powerful incentive structure to creating financial stability. Adding another CCP into the system adds complexity that impairs this balance of incentives: how can it be ensured that CCPs have sufficient transparency to conduct a proper risk management; how will the interoperable CCP be fairly margined against the direct Clearing Members and Clients; how will the interoperable CCP be integrated into the default management process.

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.

While we fully support the effort of improving efficiency of margins as far as possible and responsible, the potential benefits from cross margining have to be considered on an individual case basis. As such we cannot provide an ultimate assessment but would like to reiterate the significant negative implications of interoperability arrangements in relation to derivatives outlined above.

Please also note that the only voluntary link that has existed so far for derivatives between London and Oslo was terminated in 2019 as the envisaged economic benefits could not be realized.

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.

See our considerations above that downsides of entering into interoperability arrangements from our perspective by far outweigh any potential the benefits.

f) Other measures

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

- Yes

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

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

5000 character(s) maximum

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

Anti-procyclicality (APC):

While EU CCPs have proven their robust risk management during the Covid-19 crisis, the response to the unprecedented market volatility generated attention on APC measures. We generally appreciate the international standard setting bodies and ESMA's efforts in improving existing standards. While global work is still ongoing, the current EU review of the APC tools is implying stricter requirements. Additionally, ESMA proposed changes to APC tools in the respective EMIR RTS Art.28(1)(b) would effectively increase minimum confidence level as they would require margins to give at least 25% weight to stress testing observations currently used to size up default fund under Cover-2 requirement with ESMA explicitly commenting that any sort of scaling to ensure through-the-cycle, long term 99% confidence will not be allowed. Similar changes have been proposed to Art.28(1)(c) where the mechanism differs, but net effect remains as above. It is important to note, however, that the APC standards for EU CCPs have no equivalent in other jurisdictions. In addition, APC and transparency standards do not apply in the bilateral space, resulting in an unlevel playing field. We would encourage EU authorities to ensure consistency with the global work. We recommend a data-driven, outcomes-based approach to APC as part of CPMI-IOSCO's initiative rather than unilateral moves by the EU. A global alignment on measuring procyclicality and defining policy goals for those measures would be the most useful approach to achieve truly comparable outcomes. In addition, to further facilitate a level playing field and foster a data-driven cross-jurisdictional approach, it could be considered to mandate increased APC transparency as part of EMIR Level 1 requirements and to ensure that equivalence decisions to third country CCPs take these elements into consideration.

Porting:

Another important dimension for building a robust and efficient EU clearing ecosystem is client clearing and portability. For some clients, in particular large buy-side entities, a failure to port their positions in case of a default would be dramatic – both regarding the implications for the real economy and for financial stability. In order to ensure that clients can be successfully ported, CCPs, members and clients have enhanced continue to enhance existing arrangements. However, without regulatory action major improvements cannot be achieved. Currently portability is greatly limited due to combination of regulatory obstacles and the lack of incentives for many clients to investment in robust porting arrangements. CPMI IOSCO's current work on promoting best practices and increasing the likelihood of porting is therefore much appreciated. We would encourage also EU regulators to carefully assess regulatory barriers for successful porting in the EU framework. For instance, the likelihood of porting positions could be enhanced if the client consent mechanisms were revisited allowing regulators and CCPs to take and execute decisions swiftly. Temporary waivers for KYC and capital requirements during the porting phase could also help improve portability allowing more timely identification of back-up clearing members positions. Lastly, clearing models with strong segregation and porting arrangements are not sufficiently incentivized from a capital efficiency perspective. The ESMA Q&A on the topic indicates that CCPs should assume that none of the accounts have been ported when performing Cover-2 stress testing. Same practice applies in the instructions for ESMA Credit Stress Testing. The current interpretation of the EU rules is not met in other jurisdictions where the inclusion of all client accounts in cover-2 calculations for the CCP Default Fund may not be required. This not only fails to provide capital efficiencies for clients with strong portability arrangements but actually may even invertedly incentivize less robust arrangements, e.g. omnibus accounts which, while exposing the clients to fellow customer risk, provide higher degree of netting efficiencies. In the EU framework, models

that are considered most suitable for porting (gross margin models) may therefore produce higher stress testing results and consequently default fund contributions. To foster porting on a large scale the risk management standard could be aligned with the risk effectively brought by the client to the system, i.e. by allowing for stress testing to be amortized by a portability score representing porting likelihood and thereby addressing the default fund implications for the models.

Collateral:

Being a Commodity Clearing House, ECC is interacting with physical players that don't have access to central bank money. For them it is of utmost importance to increase the catalogue of eligible collateral for margin requirements according to EMIR. Further collateral like Emission certificates or bank guarantees could be used with a respective risk-based haircut.

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.

As outlined in detail in our answers to section 2a question 1 as well as sections 2c and 2g, we would recommend requiring EU-based market participants to maintain an active account with an EU CCP for the relevant products in scope to support a market driven migration and ensure that EU market participants are prepared for the end of the temporary equivalence of Tier 2 third country CCPs. Under this approach, regulators would request EU-based market participants to demonstrate (a) progress in building exposure (measured in initial margin) and activity (measured by cleared volumes) with an EU CCP and (b) the robustness of their contingency plans with regards to the expiry of the temporary equivalence.

In the event that expectations are not met by mid-2025, the Commission could implement a framework for monitoring risks levels at Tier 2 third country CCPs and thresholds could be established which define the maximum levels of risk acceptable. Our recommendation would be to define target levels of business to be held and conducted within the EU. Such target levels should consistently with the approach above focus on (a) the regular activity measured in cleared volume and (b) the amount of exposure measured in initial margin to define thresholds, which could be adapted over time to a target level desired by the European Commission. In order to avoid market discontinuities, maximum risk levels should be set high at the outset, and gradually reduced to the desired levels over a limited transition period. Those thresholds should differentiate between clearing members house activity and activity of clients.

Should the thresholds be exceeded, the Commission could empower EU and national prudential regulators to take supervisory actions through the supervisory review and evaluation process (SREP) for institutions to reduce the levels of risk. Such actions could include capital surcharges applied through Pillar 2 Requirements / Pillar 2 Guidance for institutions or respectively alternative measures for firms not subject to capital requirements.

Question 1.2 In particular, if you believe clients should be included, please specify which ones (e.g. only banks/other) and why:

5000 character(s) maximum

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

Please refer to our response to the previous question.

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.

Please refer to our answer to question 1 regarding our preferred approach.

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.

From our perspective, there are two measures which matter most to monitor progress: (a) the amount of exposure measure by initial margin held in the EU vs. non-EU CCPs as well as the (b) daily activity measured in cleared notional at EU CCPs vs. non-EU CCPs in the relevant products. Please refer to our answer to question 1 for further details regarding our preferred approach.

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.

Generally, DBG would like to highlight that we have an excellent relationship with our national competent authority as well as European supervisors that are part of the established EU CCP college structure and the ESMA CCP Supervisory Committee.

Regarding the question above, we would not consider regulatory compliance costs as a relevant criterion in the assessment of the effectiveness of the current supervisory set-up. Compliance costs for CCPs are first and foremost driven by the regulatory requirements themselves that CCPs have to implement. We would not expect the level of supervision to have an influence on compliance costs per se. Rather we would recommend ensuring that regulatory requirements themselves do not result in any legal uncertainties, barriers, lengthy procedures or complexity as outlined in our answers to the previous questions of this consultation (such as under section 1a, 1b and 3a).

Generally, please also refer to our response to question 2 under section 5b.

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.

Please refer to our response to question 2 under section 5b.

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.

Please refer to our response to question 2 under section 5b.

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.

Please refer to our response to question 2 under section 5b.

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.

Please refer to our response to question 2.

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.

Generally, as a supervised entity we are not in the position to choose our preferred supervisory authority. As feedback is however explicitly requested, DBG would like to highlight the following points for consideration:

First, we would like to highlight that we have an excellent relationship with our national competent authority as well as European authorities in the EMIR college structure and the ESMA CCP Supervisory Committee. It is also important to note that in contrast to the experience during the global financial crisis, the existing CCP supervisory system in the EU has proven effective and did not reveal shortcomings during the Covid-19 turmoil, which was one of the most severe crises ever experienced.

Second, significant progress has been made in recent years on the supervisory architecture: EMIR 2.2 ensured a consistent, risk-based approach to the supervision of third country CCPs, in the interest of the protection of taxpayers, financial stability, and ordinary monetary policy conduct. In light of the concerns around substantial off-shore markets, we understand that ESMA and the Commission want to review the supervisory competences for CCPs to ensure that risks can be appropriately managed.

However, the EU CCP supervisory system is already “European” with all relevant parties around the table: The EMIR college structure ensures coordination with all relevant authorities fostering coherent application of EMIR requirements. On top, EMIR 2.2 recently set up the ESMA Supervisory Committee and gave ESMA and central banks more powers in relevant areas while it was decided to leave daily supervision in the hands of national authorities. In addition, the CCP RR which was only finalized mid-2020 recognized as well that national authorities are best suited to act as competent authorities, while ESMA received an important role in the college structure ensuring coordination between the involved parties. Overall, while coordination with relevant authorities has recently been improved across CCP legislation, the current structure recognizes that national supervisory authorities play a key role in direct supervision as relevant expertise and fiscal responsibility remains in their hands.

Therefore, there are good reasons why CCPs have this very specific supervisory set-up involving different authorities compared to a more centralized EU supervisory set-up. There is a general need for differentiated treatment of entities with a strong prudential dimension. In this context, we would also like to highlight again that key EU CCPs have a national banking license, requiring that national central banks / prudential regulators are involved in supervision, too.

The supervisory set-up has not only been recently updated in CCP legislation. Also, the recent ESAs Review strengthened ESMA’s competencies significantly, i.e. direct supervision of data services providers and third country benchmark administrators but also notably in the area of ensuring more supervisory convergence through a strengthened toolbox. These new competences to foster convergence just kicked in in 2020 and the new direct supervisory competences in various data-related areas only became effective in January this year. We therefore believe ESMA should get more time to fully implement those new competences before considering additional changes.

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.

Please refer to our answer to question 2.

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.

Please refer to our answer to question 2.

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.

Please refer to our answer to question 2 under section 5b.

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.

Please refer to our answer to question 2 under section 5b.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
UCITSD	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
AIFMD	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
MMFR	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Solvency	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other amendments to EMIR in relation to non-centrally cleared derivatives	<input checked="" type="radio"/>	<input 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.

Please refer to our answer to section 3f where DBG provides recommendations where current regulatory requirements in relation to anti-procyclicality, porting and eligible collateral could be revisited with a view to further facilitate EU CCP clearing and a more efficient and competitive EU clearing ecosystem.

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.

For our recommendations to changes to the banking regulation, funds regulation and Solvency II, please refer in particular to our proposals provided in sections 1a question 2 and question 4.2 as to how clearing by PSAs and generally client clearing could be further facilitated through legislative changes that would foster the adoption of clearing access models in those areas.

Regarding consistency between EMIR and MiFIR regarding OTC derivatives requirements, DBG would also like to highlight that we agree with the proposals provided by the European Commission as part of the current MiFIR review proposal as published in November 2021, i.e. regarding the alignment of the DTO with the clearing obligation and do not see the need for further adaptations at this stage. Further, in context of section 3e regarding interoperability for ETDs and OTC contracts, we would like to highlight that considering the installation of interoperability arrangements for derivatives under EMIR would undermine the current EU regulators' efforts in relation to the MiFIR regime for access to derivatives to safeguard the integrity, stability, innovation and competitiveness of EU infrastructures. ETD open offer systems are extremely robust and efficient systems and have been historically preferred models in jurisdictions with developed and liquid markets. Importantly, the seamless integration of trading and clearing of ETDs has not prevented competition from taking place in Europe or from new products being brought to the market. To the contrary, the currently integrated structure is overwhelmingly the most efficient model for ETD markets in most developed jurisdictions given the highly responsive industry fostering competition and product development.

However, the EU is the only major jurisdiction to experiment with fully fledged open access provisions for ETDs, while other major open market economies, such as the US or Japan, have decided against them. Against that background we caution policy makers to consider that there are no provisions in MiFIR Article 38 (3) to ensure a comparable trading environment in the third country, meaning the application of the same transparency and market structure requirements. This would put the EU's sovereignty at risk by allowing third country venues and CCPs to access EU venues and CCPs without being subject to common supervision or enforcement of EU law. Hence, an open access request from a third-country may run counter to the EU's ambition to create a viable and globally competitive clearing landscape within the EU. Therefore, we strongly welcome the European Commission's proposal to remove ETDs from the scope of the "open access" regime due to unsolved risks for financial stability as well as a potential loss of innovation and

competitiveness of trading venues and CCPs within the EU should links with other venues and CCPs be enforced. We would therefore caution against an approach that would lead to inconsistency between EMIR interoperability and MiFIR open access requirements for derivatives and reiterate our concerns in relation to enforcing interoperability arrangements for derivatives as outlined under section 3e.

Generally, we would also like to highlight that in context of regulatory reporting streamlining with other legislation would be beneficial: We would encourage a simplification and streamlining of regulatory reporting. Especially electricity and gas derivative contracts are covered by reporting obligations stemming from four pieces of legislation: namely EMIR, MiFID II/MiFIR, REMIT and MAR. This constitutes a heavy reporting burden for energy exchanges and clearing houses as well as for market participants. Consequently, there is a need to streamline the requirements in order to avoid double reporting. For example, trades that have to be reported under REMIT or MiFID II/MiFIR should not need to be reported again, if they have already been reported under EMIR.

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

Question 1.2 Please detail your response to question 1:

5000 character(s) maximum

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

An advantage of DLT is the possibility for more decentralisation and increased efficiency in the financial sector. However, in the highly regulated environment of clearing markets, it requires regulated and trustworthy intermediaries like CCPs to efficiently ensure compliance with various regulatory requirements (e.g. risk management and anti-money laundering rules). Therefore, we believe that central intermediaries will combine the benefits of decentral and central infrastructure and will ensure certain functions (e.g. risk management services, netting) within the financial system if trading and settlement is moved to a DLT infrastructure.

The principles of "same business, same risk, same rules" and "tech-neutrality" should be upheld in the financial regulatory framework, regardless of the technology used. Hence, regulated and reliable intermediaries (so called trusted third parties) such as CCPs should continue to facilitate cross-ledger settlements and should mitigate counterparty risks e.g. for derivatives. To utilize DLT for business processes, it needs operators being liable for prudential administration and the management of assets for

investors.

Especially CCPs safeguard the financial markets as they manage credit and counterparty risks which remains valid also for DLT-based contracts. Further, important functions of CCPs, like multilateral netting and payment netting between different asset-classes, collateralization, and default management processes, are not widely established on DLT today. Nevertheless, we believe that DLT should be available to be used in the field of clearing with the intermediaries fulfilling the above mentioned functions and responsibilities.

Regulated entities such as CCP and CSDs are only able to do business with intermediaries, wallet providers etc. if they are trustworthy, apply AML and sanctions framework including fraud detection, conflicts of interest management and applying a code of conduct. Therefore, depending on the risk, there should be a requirement for providers of services related to digital-/crypto-assets to register with competent authorities.

In particular, digital securities/assets representing financial instruments are suitable for central clearing as the CCP diminish any counterparty risk, provide for netting efficiencies (avoiding the necessity for instant settlement) and ensure physical settlement. Therefore, we believe that CCPs should be allowed to clear them in accordance with EMIR.

More clarity is however needed regarding the conditions and prudential requirements with which CCPs would be allowed to clear digital-assets/securities/derivatives with a digital-asset underlying. It should be clarified that a CCP may accept and hold digital securities and crypto assets for settlement and margining purposes. Using DLT should also allow to segregate accounts and margin collateral custody which should be allowed by clearing regulation.

As it should be noted that the possibility of „T-instant is considered a benefit of DLT, however it is not a unique feature to DLT. Even though instant settlement would be possible already in the traditional environment depending on the instrument's nature (e.g. considering the maturity of derivatives), as of now there seems to be a majority of participants in the market preferring T+2 due to e.g. liquidity management reasons.

Finally, from a DBG perspective, we see for example the opportunity for more efficiency gains in offering risk exposure offsets by CCPs in DLT-based services and are exploring different use-cases: in 2021, for example we demonstrated in legally binding manner the application of margin account management for smart derivative contracts with two major banks. In addition, DBG cooperates with the financial technology firm HQLAx (<https://www.hqla-x.com>) which currently offers an efficient exchange of collateral, utilizing DLT in production.

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.

Please refer to our answer to sections 3f and 6 as to how clearing at EU CCPs could be further facilitated with a view to ensure a balanced, efficient and innovative clearing ecosystem in the EU based on attractive and competitive EU CCP risk management.

As a supplementary point, we would like to raise awareness on certain aspects that could further increase transparency and competitiveness in interest rate derivatives, especially STIR, within the EU.

These aspects fall within the sphere of MiFIR/ MiFID II and particularly of Commission Delegated Regulation (EU) 2017/583 (RTS 2). We have made observations that indicate towards unintended consequences resulting from the ESMA transparency framework and methodology that impact the liquidity picture of STIR ETDs. In the following, we would like to briefly outline the adverse developments and observations on pre-trade transparency by way of inadequate large-in-scale (LIS) thresholds, and the lack of tools for trading venues to reflect market practices that are otherwise allowed for OTC traded derivatives:

On the LIS methodology:

- The prescribed pre-trade LIS thresholds have impacted the ability to trade Options on Schatz futures alongside other contracts. Trade sizes in Schatz options further increased a LIS threshold was mandated that equates 1,250 contracts (prior to 2018 Eurex had set the block trade size at 300 contracts). Fewer market makers serviced investors at less favorable prices for greater size creating a negative feedback loop affecting liquidity, trade sizes and volume in which investors refrain from trading and the median trade sizes further increased.
- The impact of LIS thresholds on new products and products that have yet to progress to self-sufficient order-driven levels of liquidity. This is evidenced by the LIS calibration performed for Options on Buxl futures based on the first 3 months of trading data since its launch on September 28, 2020.
- Low duration products require higher trade sizes to achieve same economic pay-off. This is not reflected in the LIS methodology that uses the 70-th quantile of all transactions with no distinction of product-specific characteristics.
- The LIS methodology is inconsistent: Products with a high on-book turnover and, hence lower average trade sizes feature lower LIS thresholds. This reduces transparency by providing an incentive for low pre-trade transparency thresholds that apply to block trades that are published with a time delay, whereas on-book trades are published immediately.

On aggregation flexibility provided in the OTC space:

ESMA prescribes a very narrow line to what degree aggregation of orders can be deployed for trading venues regarding block trading and transparency requirements. In contrast, the degree of flexibility considering aggregation of orders and trading in the OTC space is more granular and allows OTC market participants arranging markets to adequately address trading and risk management needs. As a consequence, lit markets suffer from inflexible structures. In order to be at par, it is suggested to allow for the same degree of flexibility.

Hence, to further the development of STIR in the EU, we recommend to the European Commission to take these adjacent factors into account and to move forward mitigating measures to address unintended consequences and shortcomings of current frameworks and methodologies. For your reference, we have already proposed amendments to the current framework and methodology under RTS 2 in last year's consultation performed by ESMA. Details on our proposals regarding the LIS methodology and aggregation aspects can be retrieved at: <https://www.esma.europa.eu/file/121151/download?token=SpUqUcRh>

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