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From:	General Secretariat of the Council
On:	27 April 2023
To:	Delegations
Subject:	OPINION OF THE EUROPEAN CENTRAL BANK of 26 April 2023 on a proposal for a regulation amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets and a proposal for a directive amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions (CON/2023/11)

Delegations will find attached the document mentioned in subject.

EUROPEAN CENTRAL BANK

EUROSYSTEM

EN

ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 April 2023

on a proposal for a regulation amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets and a proposal for a directive amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions

(CON/2023/11)

Introduction and legal basis

On 31 January 2023 and 6 February 2023, the European Central Bank (ECB) received requests from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) 648/2012, (EU) 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets[1] (hereinafter the 'proposed regulation') and on a proposal for a directive of the European Parliament and of the Council amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions[2] (hereinafter the 'proposed directive').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation and the proposed directive contain provisions affecting: (1) the basic tasks of the European System of Central Banks (ESCB) to define and implement monetary policy and to promote the smooth operation of payment systems pursuant to the first and fourth indents of Article 127(2) of the Treaty, (2) the ESCB's task to contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system pursuant to Article 127(5) of the Treaty, and (3) the tasks conferred upon the ECB concerning the prudential supervision of credit institutions. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1 COM(2022) 697 final.
2 COM(2022) 698 final.

General observations

The ECB supports the package proposed by the European Commission, which aims at strengthening the Union central clearing system by introducing targeted enhancements of the regulatory framework. The ECB agrees that resilient and well-developed central counterparties (CCPs) are critical to a well-functioning Capital Markets Union.

First, the ECB welcomes the proposed steps to enhance the safety and resilience of EU central clearing by strengthening cooperation among authorities and, in view of evolving financial risks, updating prudential requirements for CCPs and bank exposures to CCPs. Second, the ECB supports the proposed measures to streamline CCP supervisory processes with a view to enabling EU CCPs to respond more swiftly to new market developments. Third, the ECB agrees with the need for additional action to reduce excessive exposures of EU clients and clearing members to third-country CCPs with a view to limiting potential risks outside the full control of Union authorities.

Robust arrangements ensuring the safety and efficiency of Union central clearing are critical from the perspective of the Eurosystem as central bank of issue. Disruptions at a CCP with significant euro-denominated business could have a negative impact on the liquidity position of euro area credit institutions and the smooth operation of payment systems, implying risks to effective monetary policy transmission and, ultimately, to achieving the Eurosystem's primary objective of maintaining price stability[3]. A strong Union central clearing system is also important for the Single Supervisory Mechanism (SSM) due to the size of the exposures of SSM supervised credit institutions to EU CCPs.

Specific observations

1. Enhancing cooperation between authorities

The ECB supports the proposed strengthening of cooperation among authorities at Union level and the expanded role for the European Securities and Markets Authority (ESMA) in fostering supervisory convergence, in particular by voting and opining on supervisory matters, as well as coordinating in crisis situations. The ECB believes that this is a step in the right direction, enhancing the supervision of central clearing at the Union level, considering the growth of clearing capacity within the Union and the related risk with a cross-border dimension. The importance and complexity of EU CCPs, which is expected to increase with the implementation of the active account requirement, as well as CCPs' interconnection with significant credit institutions as their clearing members, call for stronger supervision at Union level and the need to manage the potential spill-over of systemic risk across several Member States.

3 See General observations of Opinion CON/2017/39 of the European Central Bank of 4 October 2017 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (OJ C 385, 15.11.2017, p. 3). All ECB opinions are available on EUR-Lex.

1.1 *Colleges*

1.1.1 *Ongoing involvement of the college: opinions and annual review process*

The colleges framework, established pursuant to Regulation (EU) 648/2012 of the European Parliament and of the Council[4] (hereinafter 'EMIR'), has proven to be an effective way to address the specific challenges of central clearing resulting from the pronounced risk implications of CCPs across borders and sectors. Colleges enable authorities from different jurisdictions and with diverse mandates to exchange information, provide input, and raise concerns regarding the risk management approaches and range of services of EU CCPs. Currently, colleges issue opinions on, among others, the authorisation of CCPs, the extension of CCPs' activities and services and significant model changes. However, CCPs' risk management responses to evolving market developments and risks are not currently scrutinised in formal college processes unless such CCPs' actions imply a significant change of activities or risk models.

With a view to strengthening college involvement on an ongoing basis, the ECB fully supports the Commission's proposal for the competent authority of each CCP to submit to the college, on at least an annual basis, a comprehensive report reviewing the CCP's compliance with the provisions of EMIR and evaluating the risks to which the CCP is exposed[5]. The ECB welcomes the Commission's proposal to require the college to issue additional opinions on key supervisory decisions, such as with respect to reports on the review and evaluation of the CCP, margin requirements and potential withdrawals of authorisation[6].

Under the proposed framework, college opinions, in addition to agreeing or disagreeing with certain supervisory decisions, may also include conditions and recommendations that the college considers necessary to mitigate any shortcomings in the CCP's risk management[7]. The ECB welcomes the proposed regulation as it enables college members to specify the considerations informing their votes and to flag remaining concerns. To further enhance the voting process, college members should also be encouraged to provide reasoning when casting their votes in the college opinion process, so as to allow the CCP's competent authority to benefit more from the various perspectives of college members in a college opinion. Finally, the ECB supports the proposed obligation for the CCP's competent authority to state reasons, fully explaining, in its decision, any significant deviations from the college opinion[8]. The ECB believes that these proposed measures will enhance college involvement on an ongoing basis and will help to ensure that CCP supervision supports effective engagement with, and benefits from the perspectives of, all relevant authorities.

The ECB supports the provision in the proposed regulation for college members to provide greater input on the conduct of the annual review process, and suggests that such input should not be

4 Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

5 See Article 1, point (16)(b), of the proposed regulation.

6 See Article 1, point (12), of the proposed regulation, which inserts a new Article 17b(1), point (b), in EMIR.

7 See Article 1, point (12), of the proposed regulation, which inserts a new Article 17b(2), point (c), in EMIR.

8 See Article 1, point (12), of the proposed regulation, which inserts a new Article 17b(3) in EMIR.

restricted to simply establishing the frequency and depth of the annual review but should also address the substantive supervisory focus of that review.

1.1.2 *Cooperation in joint supervisory teams (JSTs)*

The ECB fully supports the intent underlying the proposal to introduce JSTs in the supervision of authorised EU CCPs. Enhancing the involvement of college members in the process of ongoing supervision – notably with respect to the review of the application of non-objection procedures, on-site inspections and in the context of the annual review process – is a step towards strengthening supervision at Union level. It will help college members to gain a deeper shared understanding of key developments affecting the risks and risk management of CCPs, thereby enhancing the efficiency and effectiveness of the dialogue between CCPs' competent authorities and college members across the Union. It will also enable a pooling of the resources of CCPs' competent authorities and colleges, which will further contribute to the cost-effectiveness of EU CCP supervision, to the benefit of both national competent authorities and college members.

However, the ECB does not consider it necessary to establish a new supervisory body for this purpose, as this may lead to greater institutional complexity. In order to ensure proportionality, the ECB proposes to rely on existing cooperation within the college framework. In this vein, the ECB suggests assigning the envisaged tasks of the JSTs to the college as joint supervisory activities, with participation of college members on a voluntary basis, in line with the 'no compulsion – no prohibition' principle. In case no college member volunteers to participate in a joint supervisory activity together with the competent authority, this entails that the competent authority assumes this task alone.

With a view to embedding the joint supervisory activities in the existing college processes, the ECB suggests adding an additional element to CCPs' competent authorities' report on the annual review process[9], namely a plan for joint supervisory activities during the forthcoming annual review period.

In addition to the JSTs' tasks under the proposed regulation, the ECB also proposes joint supervisory activities with respect to providing input to the non-objection procedure related to the approval of changes in the CCP's margin models, as well as to the conduct of the annual review and evaluation carried out by the EU CCP's competent authority[10]. Joint supervisory activities should also include potential desktop exercises as an additional tool for cooperative assessments of the CCP's risks and risk management procedures. To enable effective participation of all authorities, including the college, in non-objection procedures, the ECB proposes extending the respective assessment timeline (see paragraph 3.2 below).

With a view to preserving flexibility for potential joint supervisory activities with respect to ad hoc supervisory concerns that may arise, it should be possible to extend joint supervisory activities to areas not foreseen at the time of the previous annual review. In this context, the ECB welcomes the

9 See Article 1, point (16), of the proposed regulation.

10 See Article 1, point (16), of the proposed regulation, which amends Article 21 of EMIR.

possibility for competent authorities of EU CCPs to request assistance in ongoing supervisory work[11], in line with the 'no compulsion – no prohibition' principle.

Should JSTs be established, as set out in the Commission proposal, the ECB would support the participation of the clearing members' relevant supervisors in JSTs, given the importance of the nexus between clearing members and EU CCPs, and of the relevant central banks of issue and overseers, given their wider systemic perspective on the risk management of CCPs.

1.2 *European Securities and Markets Authority*

1.2.1 *ESMA's role in fostering supervisory convergence and cross-border risk mitigation*

A well-functioning Capital Markets Union requires closely aligned practices in EU CCP supervision. With a view to further promoting supervisory convergence and the consistent application of EMIR across EU CCPs, the ECB supports the proposals for strengthening the role of ESMA, as one of the European Supervisory Authorities. In particular, ESMA should have a voting right in the colleges and provide opinions on draft supervisory decisions pertaining to the annual review and evaluation, margin requirements and the withdrawal of authorisation. The ECB also supports the proposed process for ESMA opinions addressed to the EU CCP's competent authority[12]. This is fully in line with the horizontal participation of ESMA in all colleges and its resulting unique capacity and important role in promoting a consistent assessment of common issues across colleges.

1.2.2 *Cross-border coordination in crisis situations*

The ECB agrees that there is a need to strengthen the Union framework for coordination between relevant authorities in the event of stress situations that impact, or are likely to impact, EU CCPs or centrally cleared markets more generally. This is essential both with a view to identify and address Union-wide contagion risks, arising from stress situations at individual EU CCPs, at an early stage and to achieve a well-coordinated and Union-wide response to such Union-wide emergencies. A more specific framework for emergency situations will help clarify expectations of the relevant authorities and CCPs regarding the practical steps to be followed, speed up the Union's response to such emergency situations and reduce the potential risk of conflicting approaches of those authorities.

Therefore, the ECB welcomes the proposed revision of the provisions for emergency situations[13], including the specification of relevant emergency scenarios, the formal coordinating role of ESMA, the possibility for ESMA to directly retrieve the information necessary for this coordinating role and its power to issue emergency recommendations to competent authorities in situations where more than one EU CCP would be impacted by the emergency situation or where Union-wide events are destabilising cross-border centrally cleared markets.

A well-coordinated response to serious stress events impacting central clearing in the Union requires the effective interaction of the CCP Supervisory Committee with other relevant authorities. Relevant

11 See Article 1, point (18), of the proposed regulation, which inserts a new Article 23b(2d) in EMIR.
12 See Article 1, points (12) and (17), of the proposed regulation.
13 See Article 1, point (19), of the proposed regulation.

central banks of issue should therefore always be invited to meetings of the CCP Supervisory Committee that are convened when developments in financial markets may have an adverse effect on market liquidity, the transmission of monetary policy or the smooth operation of payment systems. This would also ensure consistency with the proposed regulation's approach, whereby central banks of issue would be involved in all discussions on EU CCPs (see paragraph 1.3.1 below).

1.3 *Cooperation within the CCP Supervisory Committee*

1.3.1 *Involvement of central banks of issue*

Currently, the involvement of central banks of issue in Union-level discussions regarding EU CCPs is highly asymmetrical to their respective role for Tier 2 third-country CCPs, even though EU CCPs account for the majority of clearing in Union currencies and the resulting risk implications. Within the Eurosystem, this applies even in the field of over-the-counter (OTC) derivatives, where the reliance of Union clearing members on UK CCPs is most pronounced. EU CCPs account for around 60 % of the initial margin posted by Union clearing members to EU and UK CCPs[14]. However, while central banks of issue may participate in meetings of the CCP Supervisory Committee on a wide range of issues in relation to Tier 2 third-country CCPs, their respective involvement for EU CCPs is currently limited to the discussions concerning Union-wide CCP stress tests and relevant market developments[15].

Against this background, the ECB strongly welcomes the proposal to invite central banks of issue as non-voting members to all discussions of the EU CCP Supervisory Committee on EU CCPs[16]. This will enable central banks of issue to participate, for example, also in discussions of peer review analyses, regular information-sharing on relevant supervisory activities and decisions and all colleges' opinions and recommendations.

1.3.2 *Involvement of prudential supervisors*

The risk profile of a CCP can have an impact on the risk profile of the undertakings acting as clearing members of that CCP. Such undertakings are mainly credit institutions and investment firms[17]. The resulting exposure has been steadily increasing since the global financial crisis of 2008 and the implementation of the G20 regulatory reform agenda incentivising central clearing. The institutions acting as clearing members not only implement the clearing obligation for their own trades but also act as intermediary between CCPs and other market participants, being required, or choosing, to centrally clear those trades. Thus, the interlinkage between institutions that act as clearing members and CCPs is vital and is expected to remain so in the future. Considering this interlinkage, it is not only crucial for the competent authorities responsible for the supervision of such institutions to be

14 ECB staff calculations for the period from December 2021 to August 2022, based on DTTC Data Warehouse data.

15 See paragraph 6 and 7 of Opinion CON/2017/39.

16 See Article 1, point (20)(a), of the proposed regulation, which amends Article 24a(2), point(d)(ii), of EMIR.

17 See Article 4, points (1) and (2), of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ, L 176, 27.6.2013, p. 1).

fully informed and in a timely manner about the risks managed by CCPs but also that they are in a position to offer their supervisory expertise and perspectives.

Cooperation with the prudential supervisors can be better enhanced at the level of the CCP Supervisory Committee. The tasks of the CCP Supervisory Committee, in particular the preparation of draft decisions on validation of significant changes to risk models or tiering, or the coordination of stress testing exercises, provide valuable insights on CCPs' risk profiles and allow for a comprehensive understanding of CCPs. By extension, given the aforementioned interlinkages between institutions acting as clearing members and CCPs, such discussions are also relevant for the risks these institutions may incur due to their exposures to CCPs. Thus, the prudential supervisors of the institutions with the three largest contributions to the default fund of EU CCPs should participate within the CCP Supervisory Committee meetings as non-voting members. In this way, supervisors will be informed in a timely manner on possible risks affecting individual institutions, and are able to address them, if and as needed, within ongoing supervision. Such membership should be made permanent, rather than subject to an ad hoc invitation.

1.4 *Developing a cross-sectoral monitoring mechanism*

1.4.1 *Composition*

One key feature of the supervisory framework for EU CCPs is its focus on individual CCPs, based on a combination of home country control and cross-border cooperation with host authorities across relevant sectors. Considering the integrated nature of financial markets within the Union, as well as the significant interdependencies between EU CCPs, the supervision of individual CCPs should be complemented with corresponding Union-level arrangements addressing potential Union-wide crisis situations and vulnerabilities. For example, the risk implications of central clearing interdependencies and the monitoring of the implementation of the active account requirement clearly require an assessment that is both cross-sectoral and Union-wide in nature.

Against this background, the ECB welcomes the proposal to bring together Union bodies involved in the supervision of EU CCPs, clearing members and clients – including representatives of ESMA, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the Commission, the European Systemic Risk Board (ESRB), and the ECB, including within the context of its tasks under the SSM – in a new Joint Monitoring Mechanism (JMM)[18]. The JMM should provide a comprehensive overview of the market developments relevant for clearing within the Union as well as of the potential horizontal risks, notably those related to the interconnectedness of financial actors across several jurisdictions.

Furthermore, considering that the JMM's tasks include monitoring the implementation of the active account requirement, the ECB proposes that the relevant central banks of issue of the currencies in

18 See Article 1, point (18), of the proposed regulation, which inserts a new Article 23c in EMIR.

which derivatives contracts covered by the active account requirement are denominated should participate in the JMM.

1.4.2 *Mandate and relation with other authorities*

In terms of substance, the ECB agrees with the proposal to keep the JMM's focus on monitoring and assessing horizontal risks and reporting to the relevant Union institutions, thereby leaving existing decision-making powers and processes for CCP supervision fully intact.

At the same time, it would be helpful to clarify the interaction of the JMM with the existing supervisory framework. First, with a view to ensuring effective input of the national competent authorities on the work of the JMM, the ECB suggests that the JMM's annual report on the results of its activities to the European Parliament, the Council and the Commission should be prepared in consultation with the relevant national competent authorities. Second, in order to support effective follow-up on the JMM reports, national competent authorities, the colleges and the CCP Supervisory Committee should, within the context of their own work, be required to review and consider the results of the JMM's activities, to the extent that the JMM's findings are relevant for the activities, risk profile or risk management of a specific CCP.

Moreover, the scope of the JMM's proposed task to monitor concentration risks should be broadened. The ECB understands that this task currently focuses on identifying concentration risks arising from reliance on the same service providers. The proposed regulation does not explicitly or adequately cover additional critical aspects of concentration. First, concentration risk could arise where one client is significantly exposed to a CCP through the use of various clearing members of that CCP, without prejudice to the types of products cleared in that same CCP. This is a risk that may be conceptually relevant for several CCPs, notwithstanding the fact that such concentration should be analysed at the level of each CCP. Second, concentration risk could arise where a market participant accumulates significant positions in the market for a product tradeable both in regulated as well as OTC markets. This concern can be exacerbated where the same or similar product, or even a highly correlated product, is cleared in more than one CCP. Such forms of concentration risk are currently less visible, for both authorities and market participants, despite their potential significant consequences. As highlighted during recent crises, those risks may have resulted in a significant threat to the safety and soundness of EU CCPs, market participants as well as financial stability more broadly. Thus, the ECB proposes that the monitoring activities of the JMM be enhanced within the proposed regulation by introducing, within the clearing context, more extensive coverage of concentration risk.

Furthermore, in view of the JMM's novelty, the ECB suggests providing greater flexibility to the JMM regarding the scope of its potential work. To this end, a provision should be introduced that allows for, where considered helpful, the possibility that two or more JMM members agree to use the JMM framework as the basis for conducting cross-sectoral analyses on additional Union-wide and cross-sectoral topics of common interest related to central clearing.

1.5 *Supervision of recognised third-country CCPs*

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The ECB generally supports the amendments introducing more proportionality into the recognition process of third-country CCPs as well as the amendments ensuring that ESMA receives all necessary information from Tier 2 third-country CCPs for the purposes of its supervisory activities.

The ECB suggests further clarifying the scope of the consultation of the central bank of issue in relation to the supervisory activities and procedures regarding Tier 2 third-country CCPs. Currently, this scope of consultation is delimited to the CCP's compliance with the five areas of relevance from a central bank of issue perspective: margins, liquidity risk controls, collateral, settlement and interoperability arrangements[19]. In practice, CCPs' compliance with these areas may be the subject of formal decisions taken by ESMA pursuant to certain provisions[20] as well as of specific supervisory ESMA assessments and procedures and the CCP Supervisory Committee. Furthermore, the area of margin requirements is governed by certain provisions of EMIR[21]. It is important to consult the central banks of issue on decisions regarding the review of models, stress testing and back-testing for the validation of the models and parameters adopted by the CCP to calculate its margin requirements, default fund contributions, collateral requirements and other risk control measures under EMIR[22]. Therefore, the ECB recommends maintaining the focus of the scope of the central banks of issue consultations on those five areas, but to further clarify the type of ESMA acts where the central banks of issue should be consulted (e.g., by including supervisory assessments). Furthermore, the scope of consultation should include all relevant EMIR provisions that empower ESMA to adopt a decision or conduct a supervisory assessment within these areas.

2. Updating prudential requirements

2.1 *Amendments to CCP requirements*

2.1.1 *Participation and segregation requirements*

The ECB welcomes the proposal amending the admission requirements established by CCPs for clearing members. The specific features of non-financial counterparties within the context of central clearing is highly relevant, especially given recent experiences with large margin calls stemming from the exceptionally high market volatility. Therefore, CCPs should carefully assess the distinct liquidity profile of non-financial counterparties before they are admitted as direct participants. CCPs should especially examine whether non-financial counterparties are able to meet potential increases in margin requirements or default fund contributions on a timely basis, even under stressed market conditions. Furthermore, for the sake of legal certainty, the interaction of non-financial counterparties' admission as clearing members under EMIR[23] with the requirement for a CCP to be notified as a system pursuant to Directive 98/26/EC of the European Parliament and of the Council[24] would

19 See Articles 41, 44, 46, 50 and 54 of EMIR.
20 See Articles 25(2b) and 25b(1) of EMIR.
21 See Articles 41 and 49 of EMIR.
22 See Article 49 of EMIR, see paragraph 2.3 of Opinion CON/2017/39.
23 See Article 17(4) of EMIR.
24 Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

particularly merit further specifications. Therefore, the ECB suggests that the relevant draft regulatory technical standards[25] should specify the elements of the admission criteria for non-financial counterparties. Furthermore, the ECB proposes to add the ESCB members to the list of authorities that should be consulted by ESMA during the development of these draft regulatory technical standards.

Finally, the ECB suggests clarifying that the prohibition for CCPs to participate in another CCP[26] is without prejudice to the existing provisions on interoperability arrangements that ensure an appropriate risk framework for cross-CCP clearing services[27].

2.1.2 *Margin and transparency requirements*

The ECB supports taking the opportunity of this legislative review to draw lessons from recent periods of exceptionally high market volatility, showing that there could be room to enhance margining practices. A recent report by the Basel Committee on Banking Supervision (BCBS), the Bank for International Settlements' Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO)[28] identified areas that merit further analysis, in particular with regard to the responsiveness and the transparency of CCP margin models as well as variation margin practices. It is expected that this further analysis will result in recommendations from international standard setters in the context of CCPs' margining practices, approaches and models.

Against this background, the ECB supports the proposed amendments concerning margin requirements. Passing through intraday margin calls[29] could channel back liquidity to the clearing members. However, sometimes this practice may be impractical not only for CCPs but also for clearing members and their clients. Today some CCPs may commingle intraday variation and initial margin calls. This often means that clearing members and their clients could opt to meet intraday margin calls with non-cash collateral or in a currency different from the currency in which the product is denominated. Where CCPs introduce passing through of variation margins, such flexibilities on the collateral side may be lost as intraday calls would need to be separated between variation and initial margins. Furthermore, only cash (i.e., the product currency) is likely to be accepted as eligible coverage for variation margins. Consequently, as the proposed regulation[30] foresees, passing through of variation margins should remain an option, to be considered and developed by a CCP on a best-effort basis, after assessing all pros and cons in consultation with its clearing members and their clients. This is without prejudice to potential recommendations resulting from the ongoing

25 See Article 1, point (29)(c), of the proposed regulation, which adds a new paragraph 7 to Article 37 of EMIR.

26 See Article 1, point (29)(a), of the proposed regulation, which amends Article 37(1) of EMIR.

27 See Title V of EMIR.

28 See 'Review of margining practices', BCBS, CPMI and IOSCO, September 2022. Available on the Bank for International Settlements' website at www.bis.org.

29 The pass-through of intraday margin calls may concern only variation margins, which means margins collected or paid out to reflect current exposures resulting from actual changes in market prices (see Article 1, points (4) and (6), of Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties (OJ L 52, 23.2.2013, p. 41)).

30 See Article 1, point (31), of the proposed regulation, which amends Article 41(3) of EMIR.

international work, which could eventually be reflected in draft regulatory technical standards on margin requirements[31].

With respect to transparency and disclosure of margining practices, the ECB strongly supports expanding the responsibilities of clearing members and clients clearing transactions on behalf of their respective clients (i.e., client clearing service providers). Additionally, there would be merit to mandate ESMA[32], in consultation with EBA and the members of the ESCB, to develop draft regulatory technical standards in relation to these transparency requirements applicable to CCPs and client clearing service providers. Draft regulatory technical standards would considerably enhance the standardisation and the quality of relevant disclosures. Within the context of transparency and disclosure, they would also ensure effective interaction between the responsibilities of CCPs and client clearing service providers. Finally, such draft regulatory technical standards could take into account, at a later stage and to the extent relevant, the outcome of the international work ongoing under the auspices of BCBS-CPMI-IOSCO[33] with respect to margin transparency.

2.1.3 *Collateral requirements*

In general, there is merit in allowing CCPs to accept public guarantees and public bank guarantees as collateral. The ECB acknowledges the Union's regulatory efforts to alleviate exceptional liquidity stresses stemming from recent periods of unprecedented market volatility. To avoid any doubt, however, and because the proposal remains silent on the specificities of commercial bank guarantees, the ECB emphasises that it does not support allowing uncollateralised commercial bank guarantees to be eligible collateral on a permanent basis[34]. The acceptance of uncollateralised commercial bank guarantees should remain a temporary regulatory measure applicable only to non-financial counterparties. The possibility to accept uncollateralised commercial bank guarantees on a permanent basis would represent a structural shift in regulatory risk tolerance, going beyond the objective to address non-banks' exceptional liquidity stresses. In addition, the ECB cautions against allowing CCPs to accept commercial bank guarantees from all clearing members, including financial institutions, as opposed to only from non-financial counterparties as is currently the case.

Finally, the ECB proposes expanding the scope of the regulatory technical standards developed by ESMA, which lay down the conditions under which commercial bank guarantees may be accepted as collateral to include public guarantees and public bank guarantees. This would allow ESMA to

31 See Article 41 of EMIR.

32 This would require a new Article in the proposed regulation, which would insert a new paragraph 9 in Article 38 of EMIR.

33 See 'Review of margining practices', BCBS, CPMI and IOSCO, September 2022. Available on the Bank for International Settlements' website at www.bis.org.

34 See Article 1, point (33)(a), of the proposed regulation, which amends Article 46(1) of EMIR.

further specify the relevant collateral requirements with respect to public guarantees and public bank guarantees.

2.1.4 *Reporting obligation*

The ECB strongly supports the proposal to remove the exemption from reporting requirements for intragroup transactions involving a non-financial counterparty[35]. In the context of the introduction of this exemption in 2017, the ECB identified several negative consequences for both the quality and usefulness of data reported under EMIR as well as the ability of the authorities to monitor financial stability in certain areas of financial markets[36]. These consequences are still relevant. For example, the lack of information on certain intragroup transactions impaired the ECB in the exercise of its financial stability-related tasks during the 2022 energy markets turmoil. The activity of non-financial companies represents a very large share of the energy derivatives markets. As a result, the lack of data on intragroup transactions with at least one non-financial counterparty constituted a material gap in the ECB's capability to monitor this segment of the derivatives markets. More generally, in the commodity derivatives markets, intragroup transactions form a material part of total bilateral exposures between market participants, and their identification can reveal the importance of some large conglomerates from a financial stability perspective. While the recent turmoil predominantly affected energy commodity derivatives, the nature of future crises cannot be predicted. In general, the lack of a full market picture could also impede efficient monitoring of quickly changing market dynamics by competent authorities. In this context, it is important to note that Regulation 2015/2365 of the European Parliament and of the Council[37] does not contain any similar exemption for reporting of intragroup repos, securities financing and margin lending transactions. The removal of the exemption for intragroup transactions involving a non-financial counterparty from the reporting requirements of EMIR is an important measure for the establishment of a full market picture and achieving consistency between the respective regulations.

2.1.5 *Estimation of liquidity needs*

The ECB finds it important that CCPs monitor their exposures to the most relevant Union currencies on a daily basis to better manage liquidity risk, as well as to provide their competent authorities with appropriate reporting per relevant Union currency. The proposed regulation should reflect this so as to ensure that the largest payment obligations are assessed in aggregate for all currencies and separately for each of the most relevant Union currencies of the financial instruments cleared.

2.2 *Impact on prudential supervision of credit institutions*

35 See Article 1, point (5)(a), of the proposed regulation.

36 See paragraphs 2.2.1 to 2.2.3 of Opinion CON/2017/42 of the European Central Bank of 11 October 2017 on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ C 385, 15.11.2017, p. 10).

37 Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

2.2.1 *Exemptions of intragroup transactions*

The proposed regulation introduces changes to the currently applicable framework exempting intragroup trades from requirements for clearing and margining[38] as well as from capital requirements for credit valuation adjustment risk[39]. The proposed changes encompass the framework for third-country equivalence assessments, which is a precondition for these exemptions. In the case of EMIR, it is proposed to replace the current equivalence assessment framework with a simplified framework. The exemptions should be subject to conditions ensuring that the safety and soundness of institutions, but also the stability of the financial system more broadly, are not compromised. In this context, the ECB has a number of observations.

First, for the purpose of exempting intragroup transactions from the requirements of clearing and margining, it is inadequate to limit the prior assessment of the relevant third country's framework to anti-money laundering and countering the financing of terrorism aspects only. The ECB firmly believes that several other aspects, notably the equivalence of that third country's regulatory and supervisory framework with the broader scope of EMIR, should be assessed before the exemptions are available to institutions. The assessment should include, but not be limited to, key requirements on risk mitigation techniques for OTC trades, as already provided in the current EMIR framework[40]. The ECB supports a more comprehensive equivalence assessment because it provides assurance that counterparties located in third countries are subject to sound regulatory and supervisory frameworks and Union counterparties do not incur undue risks by entering into transactions with such counterparties. According to the proposed regulation, the Commission may carry out a more comprehensive assessment of a third country's framework, potentially including the aforementioned aspects. However, such assessment should not be discretionary. Rather, this assessment should be carried out and concluded in advance, before Union counterparties are able to benefit from the aforementioned exemptions. Otherwise, Union counterparties bear significant risks from entering into, or maintaining, a large volume of intragroup transactions with counterparties that may not be subject to appropriate regulatory requirements and/or adequate supervision. Consequently, the ECB considers that, instead of the proposed simplified framework, the currently applicable equivalence framework should be maintained.

Second, the proposal has a direct impact on the application of capital requirements for credit valuation adjustment risk as specified within Regulation (EU) No 575/2013. Credit valuation adjustment is the risk of losses caused by changes in the credit spread of a derivatives transaction's counterparty due to changes in its credit quality. This adjustment arises when the Union counterparty enters into a derivatives transaction with another counterparty, including a counterparty within the same group. One of the most common reasons why Union counterparties incur such intragroup risk exposure is to support back-to-back booking practices. In the past[41], the ECB has highlighted that prudential risks can arise from certain booking practices within international groups, in particular

38 See Articles 4 and 11 of EMIR.

39 See Article 382(4) of Regulation (EU) No 575/2013.

40 See Article 11 of EMIR.

41 See 'Supervisory expectations on booking models', ECB, August 2018, available on the ECB's Banking Supervision website at www.bankingsupervision.europa.eu.

back-to-back booking practices. Irrespective of whether the intragroup transaction giving rise to credit valuation adjustment risk supports a back-to-back booking practice or not, the resulting credit valuation adjustment risk negatively impacts the Union counterparty's risk profile. Thus, Union counterparties must have adequate local arrangements and staff to properly manage such risk and hold regulatory capital to cover it, unless the relevant exemption under Regulation (EU) No 575/2013[42] applies. This exemption should only be available to Union counterparties provided that the equivalence assessment of the third country, where the other counterparty is established, covers all relevant prudential aspects of that third country's rules and specifically targets credit valuation adjustment risk in a comprehensive manner. Consequently, the ECB welcomes the introduction, in the proposed regulation, of a mandate for the assessment of third country equivalence[43], but suggests making it targeted to the prudential and supervisory requirements of the third country in question. The ECB supports that the mandate is laid down in Regulation (EU) No 575/2013. A specific equivalence decision for the purposes of exemption of intragroup transactions pursuant to Regulation (EU) No 575/2013 would be better suited as it would allow the assessment to focus on credit valuation adjustment risk. This would result in a more prudent outcome, compared to the status quo, even after the – otherwise welcome – EBA clarifications[44].

Finally, irrespective of the applicable framework for the equivalence assessment, the ECB objects to assigning the assessment of the eligibility of the third countries to the prudential supervisor, even on a temporary basis, as the proposed regulation envisages. The ECB believes that, from an institutional perspective, the Commission is best placed to undertake the responsibility of assessing the equivalence of third countries' regulatory frameworks, which requires obtaining, and keeping up to date, a comprehensive overview of regulation and supervision in third countries. This is in line with the existing Union framework for financial services, under which assessments of equivalence are typically performed by the Commission, sometimes based on technical advice from European Supervisory Authorities[45].

2.2.2 *Removal of supervisory validation of models*

As also observed in recent crises, significant risks can arise from OTC transactions that are not centrally cleared, affecting both the safety and soundness of counterparties that enter into such transactions as well as financial stability more broadly. These risks are exacerbated by the fact that the volume of non-centrally cleared OTC transactions is large and is expected to remain so, notwithstanding the gradual implementation of the clearing obligation following the G20 regulatory reforms. It is thus critical that financial counterparties apply the risk management procedures, referred to in EMIR[46], which are technically sound and fit to achieve the purpose of reducing the underlying risk from the relevant transactions. This may involve the use of models for initial margin calculation. To this end, the ECB supports clarifying supervisory requirements for Union

42 See Article 382(4), point (b), of Regulation (EU) No 575/2013.

43 See Article 2 of the proposed regulation.

44 See 'Question & Answer 2022_6495', EBA, September 2022, available on the EBA's website at www.eba.europa.eu.

45 See Commission Staff Working Document, EU equivalence decisions in financial services policy: an assessment, SWD(2017) 102 final.

46 See Article 11(3) of EMIR.

counterparties in connection with initial margin models[47]. In this regard the ECB is open to introducing greater proportionality and more flexibility, such as enabling the usage of models at the counterparties' discretion and replacing a formal validation process with a general power of objection by competent authorities. Competent authorities will have the power to take action in order to ensure that these models are sufficiently robust. The ECB suggests that these counterparties, especially credit institutions, report sufficient information on risk management procedures to their respective competent authorities, including information on the performance of the models supporting the calculation of initial margin. However, information on the performance of initial margin models is not available within the existing regulatory framework in a form appropriate for prudential purposes. If competent authorities have this information at their disposal, they will be in a position to evaluate these risk management procedures, including the initial margin models, and assess whether there is a need to take appropriate supervisory action to ensure the soundness of their application. The ECB recommends this to be defined with draft regulatory technical standards rather than guidelines, in order to ensure convergence.

In addition to the more detailed information requirements of competent authorities, market participants would also benefit from having access to key information on these risk management procedures themselves, including the aforementioned initial margin models. Such access would ensure transparency of counterparties' risk management of their non-centrally cleared OTC transactions and would also facilitate the evaluation by market participants of the approach used. Thus, the ECB suggests introducing a requirement for disclosures of high-level information on the usage of initial margin models within the EMIR framework.

3. Simplifying and accelerating supervisory approval processes

3.1 *Procedures for the authorisation and extension of services*

The ECB supports the proposal to streamline the procedures for CCP authorisation and extension of activities and services with a view to enhancing the ability of EU CCPs to respond to new market developments in a timely manner[48].

In particular, the ECB welcomes that the format and content of required documentation for CCP applications[49] should be specified through draft regulatory technical standards developed by ESMA in close cooperation with the ESCB. More detailed clarification of the respective supervisory requirements will foster transparency and predictability for CCPs and will help to significantly speed up the supervisory approval process.

The ECB also welcomes the proposal for ESMA to maintain a central database[50], to which the CCPs' competent authorities, ESMA and the members of the colleges would have access, and to which the

47 See paragraph 4.1 of Opinion CON/2017/42.
48 See Article 1, points (9), (10) and (11), of the proposed regulation.
49 See Article 1, points (9) and (10), of the proposed regulation.
50 See Article 1, point (11), of the proposed regulation.

CCP would submit all applications for authorisation[51], extension of services and activities[52] and significant changes of risk models and parameters[53]. This will facilitate swifter engagement of all relevant competent authorities during the respective assessment processes.

The ECB also agrees that a firm timeline should be set for concluding the assessment of whether an application is complete. This is important to limit respective uncertainties and delays and corresponding risks to the agility and competitiveness of EU CCPs. However, the ECB is concerned that the proposed timeline of two working days for the competent authority to confirm completeness of a CCP's application[54] is too short. To ensure that a competent authority would be able to conduct a solid assessment in any circumstances, the ECB suggests extending this period to ten working days. It may otherwise not be possible to exclude the risk of unnecessary rejections of applications, if in exceptional situations a national competent authority may not have been able to confirm within two days that all required documentation has been provided.

To benefit from the national competent authority's knowledge of the CCP due to its ongoing supervisory activities and with a view to supporting effective dialogue between the national competent authority, ESMA and the college during the assessment process, the ECB suggests that the college should be given adequate time to finalise its assessment by taking into account the draft national competent authority's assessment and the draft ESMA opinion. The national competent authority and ESMA should share their draft assessments with the college within 30 business days. Thereafter, the ECB suggests to then give all stakeholders – national competent authorities, ESMA and the college – 20 additional business days to finalise their assessments.

3.2 *Non-objection procedures for non-material changes*

The ECB welcomes the proposed introduction of a new non-objection procedure for granting a request for extension of activities or services for non-material service changes[55]. This would ensure that the depth of supervisory review is proportionate to the financial risks posed by a new activity or service and that the respective approval processes support a dynamic Union central clearing landscape. At the same time, appropriate safeguards for supervisory scrutiny should be preserved.

The proposed regulation's common criteria related to the non-material effect of a change of clearing service or activity are important to promote the overall transparency and consistency of supervisory approaches. However, these criteria would be too high-level to capture all relevant factors. Against this background, the ECB considers that the proposed additional conditions determining when the non-objection procedure may be applied[56] should be coupled with a mandate for ESMA to develop, in close cooperation with the ESCB, more granular guidance based on draft regulatory technical standards. Such additional technical guidance would also have the benefit of being more easily

51 See Article 1, point (9), of the proposed regulation.
52 See Article 1, point (10), of the proposed regulation.
53 See Article 1, point (34), of the proposed regulation.
54 See Article 1, points (9) and (10), of the proposed regulation.
55 See Article 1, point (12), of the proposed regulation, which inserts a new Article 17a in EMIR.
56 See Article 1, point (12), of the proposed regulation, which inserts a new article 17a(2) in EMIR.

adaptable, considering that the non-objection procedure would be an entirely new procedure that may require adaptations upon experience with its practical application.

Accordingly, the ECB is of the view that the use of the non-objection procedure for cases where a new currency would be added to existing services should not be addressed in the proposed regulation itself but only in draft regulatory technical standards developed by ESMA, given that that the risk impact would depend on more granular factors, such as the size of the projected clearing values and the prospective need for new liquidity risk management or settlement procedures. In order to allow all authorities involved in non-objection procedures (see paragraph 1.1.2 above) sufficient time for a substantive assessment, the ECB proposes to extend the respective time frame from 10 to 20 working days.

Finally, an EU CCP should not be permitted to start a new activity or service before the supervisory non-objection procedure has been concluded to avoid undue CCP risk-taking in the interim period. Furthermore, it would most likely be unattractive for the EU CCP to start engaging in new activities or services without assurances that supervisors would agree that such services or activities continue.

4. Reducing excessive exposures to third-country CCPs

4.1 *Active account*

4.1.1 *Active account requirement*

The proposed regulation introduces a requirement for financial and non-financial counterparties that are subject to the clearing obligation to clear at an authorised EU CCP a proportion of their exposures towards services that are offered by third-country CCPs and determined as being of substantial systemic importance. It also proposes that ESMA, in cooperation with EBA, EIOPA and the ESRB, after having consulted the ESCB, calibrates via draft regulatory technical standards the level of the clearing activity to be maintained in active accounts at EU CCPs. Such calibration should ensure that the envisaged relocation of exposures to EU CCPs results in such services no longer being considered of substantial systemic importance in terms of what would remain with the relevant third-country CCP.

The ECB supports the view that excessive exposures to, and continued overreliance on, third-country CCPs pose a risk to the financial stability of the Union that needs to be addressed by a reduction of such exposures across clearing services determined as being of substantial systemic importance. The ECB therefore strongly welcomes such measure, which should ensure a balance between limiting systemic and financial stability risks to the Union and supporting a gradual creation of a resilient and liquid Union-based clearing market. The ECB has a number of comments regarding the proposed active account requirement.

First, the proposed regulation provides that ESMA should consider phase-in periods leaving suitable time for the progressive implementation of the active account requirement. The ECB supports this proposal, as it is necessary to avoid any potential negative impact of a sudden implementation of this requirement on market participants and EU CCPs. In order to ensure safe and robust central

clearing it is also crucial to calibrate this requirement gradually. This would allow counterparties to progressively fulfil their clearing requirements, in terms of the proportions of exposures cleared at accounts at EU CCPs. This way, ESMA, using the possibility to review the regulatory technical standards on the calibration of the active account requirement on the basis of information submitted by the JMM[57], could ensure that the calibration of the proportion of clearing activity to be maintained in active accounts at EU CCPs could be adapted to market developments, or any other relevant circumstances. Such gradual calibration should allow for efficient market-based adjustments and mitigation of potential financial stability risks. As a result, a more attractive and robust Union clearing market would develop. Thus, the ECB proposes that such gradual implementation should be reflected in the mandate for ESMA to develop draft regulatory technical standards specifying the calibration of the active account requirement.

Second, after completion of the phase-in period, the active account requirement should be calibrated to an ultimate target level where relevant clearing services provided by third-country CCPs are no longer of substantial systemic importance. ESMA is mandated, pursuant to EMIR[58], to determine the CCPs or clearing services that are of such substantial systemic importance on the basis of a fully reasoned assessment. Since ESMA performs such assessment using a combination of quantitative indicators and qualitative analysis, it should, for the calibration of the active account requirement, consider a combination of quantitative and qualitative metrics as well.

Third, when calibrating the levels of the clearing activity, ESMA should take into account the possible impact of a gradual relocation, considering the benefits and risks to the Union's financial stability and the potential relocation dynamics of clearing activities to third countries. This could be achieved by requiring ESMA to conduct a cost-benefit analysis when determining the timeline and required activity levels of the phase-in period, as well as every time a recalibration becomes necessary.

Fourth, when developing the methodology for calculating the levels of clearing activity, ESMA should ensure that it elaborates not only on the aggregate proportion of activity on a Union level, which would be necessary to ensure that the reduction in clearing[59] is such that the services in third-country CCPs are no longer of systemic importance. ESMA should also ensure that it elaborates on the individual proportions of activity that financial and non-financial counterparties subject to the clearing obligation would need to maintain in their active accounts at EU CCPs. The ECB understands that it is the legislative intention that the draft regulatory technical standards mentioned in the proposed regulation[60] will include such individual proportions of activity. This is because the active account requirement itself is directly applicable and addressed to financial and non-financial counterparties that are subject to the clearing obligation. It is only based on such individually determinable proportions that each financial and non-financial counterparty that is subject to the clearing obligation will be able to comply with the active account requirements and develop the related plans envisaged

57 See Article 1, point (18), of the proposed regulation, which inserts a new Article 23c(5) in EMIR.
58 See Article 25(2c) of EMIR.
59 See Article 1, point (4), of the proposed regulation, which inserts a new Article 7a(5) in EMIR.
60 See Article 1, point (4), of the proposed regulation, which inserts a new Article 7a(5) in EMIR.

in the proposed amendments to Directive 2013/36/EU of the European Parliament and of the Council[61], contained in the proposed directive.

Fifth, the proposed regulation clarifies that counterparties subject to the active account requirement must confirm, via reporting to the competent authority of the EU CCP, their compliance with this requirement on an annual basis. The frequency of such reporting may have direct consequences on the effective monitoring of compliance with the active account requirement and of the concentration risk towards recognised third-country CCPs offering services identified as being of substantial systemic importance. Thus, the ECB proposes to increase the frequency of this reporting to a quarterly basis, in line with the frequency for monitoring of regular supervisory reporting.

Sixth, the proposed regulation clarifies that such reporting must be submitted by financial and non-financial counterparties to the EU CCP's competent authority. In accordance with the proposed directive, the ECB understands that other authorities, which are not the EU CCP's competent authority, could be called to review the alignment of counterparties under their supervision with the relevant Union policy objectives or broader transition trends relating to the use of the active account pursuant to the proposed regulation. In this context, it is crucial for such authorities to be included as recipients of such reporting. Furthermore, the information on the clearing activity at EU CCPs alone would be insufficient to monitor compliance with the active account requirement as this requires a view on counterparties' global activity in the relevant categories of derivatives contracts. Therefore, reporting should encompass, separately, information on transactions cleared at authorised CCPs and recognised third-country CCPs. This will allow competent authorities to capture cases of non-compliance with the active account requirement, where counterparties subject to the active requirement keep using only recognised third-country CCPs for the purpose of clearing certain categories of derivatives contracts.

Seventh, it is necessary to harmonise the reporting format for the information to be reported by each counterparty on the outcome of the calculation made under the active account requirement[62]. This would ensure a minimum level of comparability of the data reported by counterparties subject to the active account requirement and, therefore, a sound monitoring of compliance with the active account requirement. Accordingly, the draft regulatory technical standards on the calibration of the active account requirement should be accompanied by draft implementing technical standards specifying the format of the information to be reported.

Finally, the proposed regulation introduces a change in the calculation methodology for the clearing obligation, requiring, when calculating the positions towards the thresholds, to only include derivatives contracts that are not cleared at an authorised EU or a recognised third-country CCP. Given the link between the scope of the active account and the scope of the clearing obligation, the ECB invites the Union legislator to take into account the potential implications that the calculation methodology change could have on both the scope of the active account requirement, such as its

61 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

62 See Article 1, point (4), of the proposed regulation, which inserts a new Article 7a(4) in EMIR.

possible expansion, and on the active account's ability to address the risk associated with excessive exposures of Union clearing members and clients to third-country CCPs that provide clearing services identified as being of substantial systemic importance.

4.1.2 *Proposed amendments to Directive 2013/36/EU*

The proposed amendments to Directive 2013/36/EU require institutions and competent authorities to address any concentration risk that may arise from their exposures towards CCPs, in particular third-country CCPs offering services of substantial systemic importance for the Union. In this context the competent authorities designated pursuant to Directive 2013/36/EU are expected to assess and monitor the alignment of institutions under their supervision with the relevant Union policy objectives, framed by the active account requirement set out in the proposed regulation. Amendments to the review and evaluation process are proposed. In addition, the proposed directive introduces a new supervisory power in Directive 2013/36/EU allowing competent authorities to specifically assess and remediate excessive concentration risk arising from the exposures of institutions under their supervision towards third-country CCPs offering services of substantial systemic importance for the Union. The ECB has a number of comments in this regard.

First, the proposed amendments to the supervisory framework are necessary to ensure that competent authorities can assess and monitor concentration risk arising from exposures towards CCPs in a more targeted manner, in particular those offering services of substantial systemic importance for the Union. The existing provisions under Directive 2013/36/EU[63] only require competent authorities to address such concentration risk in a context where CCPs have an inherent tendency to large scale concentration in order to benefit from economies of scale and network effects. The ECB therefore welcomes the clarification brought by the active account requirement on the notion of concentration. Such clarification, as reflected in the proposed directive, ensures that competent authorities dispose of a more targeted supervisory framework to take actions, compared to the existing possibility for competent authorities to impose additional own funds requirements for risks that are not covered or not adequately covered by the existing capital requirements under Directive 2013/36/EU[64].

Second, the competent authorities, when addressing the concentration risk of institutions, should primarily focus on the individual situation of each institution. In this regard, the safety and soundness of institutions should remain the primary objective of the competent authorities exercising prudential supervision under Directive 2013/36/EU.

Third, considering that the proposed amendments to Directive 2013/36/EU are linked to the active account requirement, competent authorities should not be expected to exercise the proposed powers before ESMA, in cooperation with EBA, EIOPA and ESRB and after consulting the ESCB, has developed draft regulatory technical standards concerning the active account. This is because competent authorities need clear criteria to determine under which circumstances the exposure of a clearing member or client under its supervision could raise concerns. Furthermore, effective

63 See Article 81 of Directive 2013/36/EU.
64 See Article 104 of Directive 2013/36/EU.

monitoring of the active account requirement is dependent on adequate reporting. Thus, the ECB proposes that the reporting under the proposed regulation[65] should be directly submitted to both the competent authority of the EU CCP and the competent authority of the institution subject to the reporting requirement.

Fourth, as mentioned above, the JMM is tasked with monitoring the active account requirement, as well as with the broader monitoring of any potential risks, including concentration risks, arising from the interconnectedness of financial actors. Competent authorities could take into account the outcome of such monitoring in their assessment of concentration risk arising from institutions under their supervision's exposures towards CCPs[66].

Furthermore, the proposed directive requires EBA, in coordination with ESMA, to develop guidelines ensuring a consistent methodology for integrating concentration risk arising from exposures towards EU CCPs in supervisory stress testing[67]. Directive 2013/36/EU[68] aims at ensuring that competent authorities carry out supervisory stress tests on supervised institutions, using common methodologies defined by EBA guidelines. Furthermore, as EBA Guidelines are not risk-specific, additional standalone guidelines to cover a particular risk or elements of risk should not be required. Any particular risk could be integrated systematically within the existing guidelines.

4.2 *Information on clearing services*

The proposed regulation requires clearing members and clients that provide clearing services in both authorised EU and recognised third-country CCPs to inform their clients about the possibility to clear a derivative contract in an EU CCP[69]. The ECB supports this requirement, which should contribute to achieving relevant Union policy objectives in two ways. First, the ECB understands that the scope of this requirement is broader than the scope of the active account requirement, as it also encompasses transactions that are not subject to the clearing obligation and requires relevant clearing members and clients to systematically propose Union clearing alternatives even to services that are not identified as being of substantial systemic importance by ESMA. Second, this requirement should provide an incentive to end-clients to clear at CCPs authorised in the Union.

Furthermore, the proposed regulation introduces a requirement for relevant clearing members and clients to report the scope of their clearing activities at recognised third-country CCPs[70]. The ECB welcomes this requirement, which ensures that competent authorities as well as the JMM have access to necessary information to monitor clearing activities in recognised third-country CCPs. Furthermore, the ECB strongly supports that ESMA, mandated to develop draft regulatory technical standards specifying the content of this reporting, should take into account information already available under the existing reporting framework. Redundancies in reporting create undue burdens

65 See Article 1, point (4), of the proposed regulation, which inserts a new Article 7a(4) in EMIR.
66 See Article 2, point (3), of the proposed directive, which amends Article 81 of Directive 2013/36/EU.
67 See Article 2, point (4), of the proposed directive.
68 See Article 100 of Directive 2013/36/EU.
69 See Article 1, point (4), of the proposed regulation, which inserts a new Article 7b(1) in EMIR.
70 See Article 1, point (4), of the proposed regulation, which inserts a new Article 7b(2) in EMIR.

for institutions. These issues may affect not only the institutions' reporting costs, but also the quality and integrity of data provided to competent authorities.

The ECB has several comments with regard to such reporting on clearing activities.

First, to enhance the ability of competent authorities and the JMM to have a comprehensive overview of market developments relevant for clearing in the Union, they should receive the necessary information covering both authorised EU and recognised third-country CCPs. Thus, the ECB proposes to increase the scope of the reporting requirement to cover exposures to authorised EU CCPs. Such an extension of scope will also have to be commensurately reflected in ESMA's mandate to develop draft regulatory and implementing technical standards specifying the content and the format of such reporting.

Second, the proposed regulation clarifies that the reporting by clearing members and clients on clearing activities must be submitted to competent authorities on an annual basis. The frequency of such reporting may have direct consequences on the effective monitoring of those clearing activities, notably in the context of the active account requirement and the monitoring of concentration risk towards CCPs. Thus, the ECB proposes to increase the frequency of this reporting to a quarterly basis, in line with the frequency of regular supervisory reporting.

Third, the proposed regulation clarifies that the reporting must be submitted by clearing members and clients to their competent authorities. In accordance with EMIR[71], Directive 2013/36/EU[72], and Council Regulation (EU) No 1024/2013[73], such competent authorities may differ for clearing members and clients. Thus, in the interest of clarity, an amendment should be added to the proposed regulation to reflect this point and ensure that competent authorities receive such reporting in line with their supervisory mandates as per the currently applicable framework.

Where the ECB recommends that the proposed regulation and the proposed directive are amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

71 See Article 2, point (13), of EMIR.

72 See Article 4 of Directive 2013/36/EU.

73 See Article 6 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

Done at Frankfurt am Main, 26 April 2023.

The President of the ECB

Christine LAGARDE

Technical working document

produced in connection with ECB Opinion CON/2023/11[1]

on a proposal for a regulation amending Regulations (EU) 648/2012, (EU) 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets and a proposal for a directive amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions

Drafting proposals

Part I: drafting proposals on the proposed regulation

Text proposed by the Commission	**Amendments proposed by the ECB**[2]
Amendment 1 Recital 12 of the proposed regulation	
'(12) To ensure that clients are aware of their options and can take an informed decision as where to clear their derivative contracts, clearing members and clients that provide clearing services in both Union and recognised third-country CCPs should inform their clients about the option to clear a derivative contract in a Union CCP so that clearing in those services identified as of substantial systemic importance is reduced in Tier 2 CCPs in order to ensure the financial stability of the Union.'	'(12) To ensure that clients are aware of their options and can take an informed decision as where to clear their derivative contracts, clearing members and clients that provide clearing services in both Union and recognised third-country CCPs should inform their clients about the option to clear a derivative contract in a Union CCP ~~so that clearing in those services identified as of substantial systemic importance is reduced in Tier 2 CCPs in order to ensure the financial stability of the Union~~. **Such obligation to inform should be distinct from the active account requirement.**'
Explanation *The scope of the proposed Article 7b of Regulation (EU) No 648/2012 of the European Parliament and of the Council[3] (hereinafter 'EMIR) is broader than the scope of the active account requirement under the*	

1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

3 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201 27.7.2012, p. 1).

Text proposed by the Commission	Amendments proposed by the ECB[2]
proposed Article 7a of EMIR, requiring relevant clearing members and clients to systematically propose Union clearing alternatives even for services that are not determined as being of substantial systemic importance by the European Securities and Markets Authority (ESMA). *Furthermore, the purpose of the proposed Article 7b(1) of EMIR is to provide incentives to end clients, subject or not to the active account requirement, to clear at EU central counterparties (CCPs).* *While the European Central Bank (ECB)- welcomes the possibility for such end clients to choose among different clearing locations, the implementation of the active account requirement, constituting a requirement and not an incentive, should not be compromised.*	
Amendment 2 Point (1) of Article 1 of the proposed regulation (Article 3 of EMIR)	
‘Article 3 Intragroup transactions 1. In relation to a non-financial counterparty, an intragroup transaction shall be an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or, if it is established in a third country that third country is not listed pursuant to paragraphs 4 and 5. 2. In relation to a financial counterparty, an intragroup transaction shall be any of the following: (a) an OTC derivative contract entered into with another counterparty which is part of the same group, provided that all of the following conditions are met: (a) the financial counterparty is established in the Union or, if it is established in a third country, that third country is not listed pursuant	~~‘Article 3~~ ~~Intragroup transactions~~ ~~1. In relation to a non-financial counterparty, an intragroup transaction shall be an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or, if it is established in a third country that third country is not listed pursuant to paragraphs 4 and 5.~~ ~~2. In relation to a financial counterparty, an intragroup transaction shall be any of the following:~~ ~~(a) an OTC derivative contract entered into with another counterparty which is part of the same group, provided that all of the following conditions are met:~~ ~~(a) the financial counterparty is established in the Union or, if it is established in a third country, that third country is not listed pursuant~~

Text proposed by the Commission	Amendments proposed by the ECB[2]
to paragraphs 4 and 5;	~~to paragraphs 4 and 5;~~
(b) the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;	~~(b) the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;~~
(c) both counterparties are included in the same consolidation on a full basis;	~~(c) both counterparties are included in the same consolidation on a full basis;~~
(d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;	~~(d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;~~
(b) an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme, referred to in Article 113(7) of Regulation (EU) No 575/2013, provided that the condition set out in point (a)(ii) of this paragraph is met;	~~(b) an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme, referred to in Article 113(7) of Regulation (EU) No 575/2013, provided that the condition set out in point (a)(ii) of this paragraph is met;~~
(c) an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body, as referred to in Article 10(1) of Regulation (EU) No 575/2013;	~~(c) an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body, as referred to in Article 10(1) of Regulation (EU) No 575/2013;~~
(d) an OTC derivative contract entered into with a non-financial counterparty which is part of the same group, provided both the following conditions are met:	~~(d) an OTC derivative contract entered into with a non-financial counterparty which is part of the same group, provided both the following conditions are met:~~
(a) both counterparties to the derivative contract are included in the same consolidation on a full basis and are subject to an appropriate centralised risk evaluation, measurement and appropriate control procedures;	~~(a) both counterparties to the derivative contract are included in the same consolidation on a full basis and are subject to an appropriate centralised risk evaluation, measurement and appropriate control procedures;~~
(b) the non-financial counterparty is established in the Union or, if it is established in a third-country, that third country is not listed under paragraphs 4 and 5.	~~(b) the non-financial counterparty is established in the Union or, if it is established in a third-country, that third country is not listed under paragraphs 4 and 5.~~

Text proposed by the Commission	Amendments proposed by the ECB[2]
3. For the purposes of this Article, counterparties shall be considered included in the same consolidation when they are both any of the following:	~~3. For the purposes of this Article, counterparties shall be considered included in the same consolidation when they are both any of the following:~~
(a) included in a consolidation in accordance with Directive 2013/34/EU or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation;	~~(a) included in a consolidation in accordance with Directive 2013/34/EU or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation;~~
(b) covered by the same consolidated supervision in accordance with Directive 2013/36/EU or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 127 of Directive 2013/36/EU.	~~(b) covered by the same consolidated supervision in accordance with Directive 2013/36/EU or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 127 of Directive 2013/36/EU.~~
4. For the purposes of this Article, transactions with counterparties established in any of the following third countries shall not benefit from any of the exemptions for intragroup transactions:	~~4. For the purposes of this Article, transactions with counterparties established in any of the following third countries shall not benefit from any of the exemptions for intragroup transactions:~~
(a) where the third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[*1];	~~(a) where the third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[*1];~~
(b) where the third country is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[*2] and their	~~(b) where the third country is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[*2] and their~~

Text proposed by the Commission	Amendments proposed by the ECB[2]
subsequent updates which are specifically approved twice a year, customarily in February and October, and published in series C of the Official Journal of the European Union.	~~subsequent updates which are specifically approved twice a year, customarily in February and October, and published in series C of the Official Journal of the European Union.~~
5. Where appropriate in the light of the legal, supervisory and enforcement arrangements of a third country with regard to risks, including counterparty credit risk and legal risk, the Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation to identify the third countries whose entities may not benefit from any of the exemptions for intragroup transactions despite not being listed pursuant to paragraph 4.	~~5. Where appropriate in the light of the legal, supervisory and enforcement arrangements of a third country with regard to risks, including counterparty credit risk and legal risk, the Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation to identify the third countries whose entities may not benefit from any of the exemptions for intragroup transactions despite not being listed pursuant to paragraph 4.~~
*1 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73). *2 Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 413 I, 12.10.2021, p. 1).'	*1 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73). *2 Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 413 I, 12.10.2021, p. 1).'

Explanation

The ECB suggests withdrawing the proposed simplified framework that would replace the existing equivalence assessment. The prudential framework as laid down in EMIR, which allows for the possibility to exempt intragroup transactions from the clearing and margining obligations should be maintained. This is notwithstanding the introduction, by the proposed regulation, of a targeted equivalence assessment in Article 382(4) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[4], covering prudential regulation and supervision, which the ECB welcomes.

See paragraph 2.2.1 of the Opinion.

Amendment 3 Point (4) of Article 1 of the proposed regulation (Article 7a(3) of EMIR)	
'[…]	'[…]

[4] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176 27.6.2013, p. 1).

Text proposed by the Commission	Amendments proposed by the ECB[2]
3. A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall calculate its activities in the categories of derivative contracts referred to in paragraph 1 at CCPs authorised under Article 14.'	3. A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall calculate its activities in the categories of derivative contracts referred to in paragraph ~~1~~**2** at CCPs authorised under Article 14 **and, separately, at CCPs recognised under Article 25**.'
	Explanation *The information on clearing activity at EU CCPs alone would not be sufficient to monitor the proportion of transactions cleared within the Union in accordance with the active account requirement. In order to evaluate a given counterparty's reliance on relevant third-country CCPs for the clearing of the categories of derivative contracts referred to in paragraph 2 of the proposed Article 7a, the counterparty should also calculate and report on its global activity, including its activity at recognised third-country CCPs. The reporting should therefore encompass, separately, information on transactions cleared at authorised CCPs and at recognised third-country CCPs. Such enlarged reporting will allow competent authorities to capture cases of non-compliance with the active account requirement, where counterparties subject to the active requirement keep using only recognised third-country CCPs for the purpose of clearing certain categories of derivative contracts.* *See paragraph 4.1.1 of the Opinion.*
Amendment 4 Point (4) of Article 1 of the proposed regulation (Article 7a(4) of EMIR)	
'[…] 4. A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall report to the competent authority of the CCP or CCPs it uses the outcome of the calculation referred to in paragraph 2 on an annual basis, confirming their compliance with the obligation set out in that paragraph. The CCP's competent authority shall immediately transmit that information to ESMA and the Joint Monitoring Mechanism referred to in Article 23c.	'[…] 4. A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall report **to its respective competent authority and** to the competent authority of the CCP or CCPs it uses the outcome of the calculation referred to in paragraph 2 on ~~an annual~~ **a quarterly** basis, confirming their compliance with the obligation set out in that paragraph. The CCP's competent authority shall immediately transmit that information to ESMA and the Joint Monitoring Mechanism referred to in Article

Text proposed by the Commission	Amendments proposed by the ECB[2]
[…]'	23c. […]'
Explanation *The ECB understands that the competent authorities of counterparties, which are responsible for reviewing the alignment of those counterparties, in particular institutions and investment firms under their supervision, with the relevant Union policy objectives or broader transition trends relating to the use of account structure under the proposed regulation, could be different from the competent authority of the CCP. These authorities should be included as recipients of such reporting. Furthermore, the ECB proposes to increase the frequency of reporting, in line with the frequency for monitoring regular supervisory reporting, to ensure an effective monitoring of compliance with the active account requirement and of the concentration risk towards third-country CCPs offering services identified as of substantial systemic importance.* *See paragraph 4.1.1 of the Opinion.*	
Amendment 5 Point (4) of Article 1 of the proposed regulation (Article 7a(5) of EMIR)	
'[…] 5. ESMA shall, in cooperation with the EBA, EIOPA and ESRB and after consulting the ESCB, develop draft regulatory technical standards specifying: (a) the proportion of activity in each category of the derivative contracts referred to in paragraph 2; that proportion shall be set at a level that results in a reduction in clearing in those derivative contracts at those Tier 2 CCPs offering services of substantial systemic importance for the financial stability of the Union or one or more of its Member States pursuant to Article 25(2c) and that ensures clearing in such derivative contracts is no longer of substantial systemic importance; (b) the methodology for calculation under paragraph 3. […]'	'[…] 5. ESMA shall, in cooperation with the EBA, EIOPA and ESRB and after consulting the ESCB, develop draft regulatory technical standards specifying: (a) the proportion**s** of activity in each category of the derivative contracts referred to in paragraph 2; th**ose**~~at~~ proportion**s** shall be set at level**s** that result~~s~~ in a reduction in clearing in those derivative contracts at those Tier 2 CCPs offering services of substantial systemic importance for the financial stability of the Union or one or more of its Member States pursuant to Article 25(2c) and that **gradually move towards a target level that** ensures clearing in such derivative contracts is no longer of substantial systemic importance; (b) the methodology for calculation under paragraph 3**, including for calculation of proportions of activity of individual financial institutions**. **ESMA shall ensure that the draft regulatory**

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	technical standards include qualitative and quantitative metrics for the calibration referred to in point (a) of the first subparagraph, which take into account: **(a) the costs, risks and the burden such calibration entails for financial and non-financial counterparties, the impact on their competitiveness, the risk that those costs are passed on, and potential relocation dynamics to third countries' CCPs;** **(b) the possibility to set a gradual timeline for fulfilling the active account requirement, where justified for Union financial stability.** […]'
Explanation *To avoid any potential negative impact of a sudden relocation of clearing exposures on market participants and EU CCPs and to ensure continuity in the clearing of exposures, the active account requirement should be implemented gradually. A gradual timeline for the calibration of the proportion of exposures to be maintained in active accounts at EU CCPs will provide for an efficient market-based adjustment and build a more attractive and robust Union clearing market. Furthermore, the gradual timeline will also ensure that the implementation of the active account requirement could be adapted to market developments or to any other relevant circumstances.* *Furthermore, the active account requirement should be calibrated to a level where relevant clearing services provided by third-country CCPs are no longer of substantial systemic importance. In defining such calibration, ESMA should take into account the assessment it undertakes pursuant to Article 25(2c) of EMIR relative to the assessment of the substantial systemic importance to the Union or one or more of its Member States of a third-country Tier 2 CCP or services it provides. Considering that such assessment is performed using a combination of quantitative and qualitative metrics, ESMA should have the possibility to mirror such combination for the calibration of the active account requirement.* *Finally, to avoid any doubt, the methodology developed in the draft regulatory technical standards referred to in paragraph 5 should also include the methodology for calculating the proportions of activity that individual counterparties, as addressees of the active account requirement, would have to relocate to EU CCPs.* *See paragraph 4.1.1 of the Opinion.*	

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Amendment 6 Point (4) of Article 1 of the proposed regulation (Article 7a(5a) new of EMIR)	
No text	'[…] **5a**. **ESMA shall, in cooperation with the EBA, EIOPA and ESRB and after consulting the ESCB, develop draft implementing technical standards specifying the format of the information to be submitted to the competent authorities referred to in paragraph 4.** **ESMA shall submit those draft implementing technical standards to the Commission by [PO: please align with the submission date of the draft regulatory technical standards referred to in Article 7a(5)].** **Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.**'
Explanation *The ECB considers it necessary to harmonise the reporting format for information to be reported pursuant to Article 7a(4) by means of draft implementing technical standards to be developed by ESMA. A uniform reporting format would provide for a minimum level of comparability of the data reported by counterparties in different Member States.* *See paragraph 4.1.1 of the Opinion.*	
Amendment 7 Point (4) of Article 1 of the proposed regulation (Article 7b(2) of EMIR)	
'[…] 2. Clearing members and clients that are established in the Union or are part of a group subject to consolidated supervision in the Union and that clear	'[…] 2. Clearing members and clients that are established in the Union or are part of a group subject to consolidated supervision in the Union and that clear

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in a CCP recognised under Article 25, shall report to their competent authority the scope of their clearing activity in such CCP on an annual basis, specifying all of the following: […]'	in a CCP **authorised under Article 14 or** recognised under Article 25, shall report to their **respective** competent authority the scope of their clearing activity in such CCP on **a quarterly** ~~an annual~~ basis, specifying all of the following: […]'
Explanation *To have a comprehensive overview of market developments relevant for clearing in the Union, monitor the implementation of certain clearing-related requirements of the proposed regulation and timely identify potential risks arising from the interconnectedness of financial actors, competent authorities and the Joint Monitoring Mechanism (JMM) should receive reporting that covers clearing members' and clients' activities towards both authorised and recognised CCPs.* *In accordance with Article 2, point (13), of EMIR, Article 4 of Directive 2013/36/EU of the European Parliament and of the Council[5] and Article 6 of Council Regulation (EU) No 1024/2013[6], competent authorities responsible for receiving reporting and enforcing its submission may differ for clearing members and clients. In the interest of clarity, the ECB suggests an amendment to reflect this point. Furthermore, the ECB proposes to increase the frequency of such reporting. Reporting on a quarterly basis would ensure the effective monitoring of clearing activities, notably in the context of the active account requirement and the monitoring of concentration risk towards recognised CCPs.* *See paragraph 4.2 of the Opinion.*	
Amendment 8 Point (7)(b) of Article 1 of the proposed regulation (Article 11(3) of EMIR)	
'A non-financial counterparty becoming subject for the first time to the obligations laid out in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those	'**Counterparties shall notify to their competent authorities the models used for initial margin calculation at least three months prior to their usage. Competent authorities may object to the use of a specific initial margin model by the counterparty if the model does not meet the conditions laid down in the regulatory technical**

[5] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 27.6.2013, p. 338).

[6] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

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obligations for contracts entered into during the four months following that notification. EBA may issue guidelines or recommendations with a view to ensure a uniform application of the risk-management procedures referred to in the first subparagraph, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010. EBA shall develop drafts of those guidelines or recommendations in cooperation with the ESAs.'	**standards referred to in paragraph 15. Where a competent authority objects, the counterparty is entitled to continue using the initial margin model up to one year following receipt of the objection. Where counterparties cease using such models, they shall notify their competent authorities by the end of the quarter in which they ceased using the model.** **Financial counterparties shall report information on the risk-management procedures mentioned in the first subparagraph, including, where relevant, in relation to initial margin models used, to their competent authorities and shall disclose key information on these risk-management procedures.** A non-financial counterparty becoming subject for the first time to the obligations laid out in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification. ~~EBA may issue guidelines or recommendations with a view to ensure a uniform application of the risk-management procedures referred to in the first subparagraph, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.~~ ~~EBA shall develop drafts of those guidelines or recommendations in cooperation with the ESAs.~~'
Explanation *It is critical that counterparties – especially financial counterparties – apply risk management procedures,*	

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referred to in paragraph 3 of Article 11 of EMIR, which are technically sound and fit to achieve the purpose of reducing the underlying risk from the relevant trades. This may involve the use of models for initial margin calculations. To this end, the ECB is open to the usage of models at counterparties' discretion and replacing a formal validation process with a general power of objection by competent authorities that is not limited in time. In addition, the ECB suggests that these counterparties, especially credit institutions, report sufficient information on risk management procedures to their competent authorities, including information on the performance of the models supporting the calculation of initial margin. Finally, market participants would benefit from increased transparency in relation to such models. Thus, the ECB suggests introducing a disclosure requirement of high-level information on the usage of initial margin models within the framework of EMIR. *Furthermore, regulatory technical standards would be a more appropriate instrument than guidelines to ensure convergence on risk management procedures, as explained under Amendment 9.* *See paragraph 2.2.2 of the Opinion.*	
Amendment 9 Point (7)(c) of Article 1 of the proposed regulation (Article 11(15) of EMIR)	
'in paragraph 15, first subparagraph, point (aa) is deleted.'	'in paragraph 15, first subparagraph, point (aa) is ~~deleted',~~ **replaced by the following:** **"(aa) the supervisory requirements for counterparties in connection with initial margin models additional to those specified in point (a);";** in paragraph 15, first subparagraph, point (ab) is added: **"(ab) the data standards, formats and type of information to be reported and disclosed on risk-management procedures, including where relevant on initial margin models, in accordance with the supervisory requirements referred to in point (aa);"**'
Explanation	

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It is critical that counterparties – especially financial counterparties – apply risk management procedures, referred to in paragraph 3 of Article 11 of EMIR, which are technically sound and fit to achieve the purpose of reducing the underlying risk from the relevant trades. This may involve the use of models for initial margin calculations. To this end, the ECB is open to the usage of models at counterparties', especially financial counterparties, discretion and replacing a formal validation process with a general power of objection by competent authorities that is not limited in time. In addition, the ECB suggests that these counterparties, especially credit institutions, report sufficient information on risk management procedures to their competent authorities, including information on the performance of the models supporting the calculation of initial margin. Finally, market participants would benefit from increased transparency in relation to such models. In order to ensure consistency in such reporting and disclosures, the ECB suggests including reporting and disclosure requirements in the European Supervisory Authorities' mandate to develop draft regulatory technical standards. *See paragraph 2.2.2 of the Opinion.*	
Amendment 10 Point (11)(b) of Article 1 the proposed regulation (Article 17(1) of EMIR)	
'1. The applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of its authorisation as referred to in Article 15(1) in an electronic format via the central database referred to in paragraph 7. The application shall be immediately shared with the CCP's competent authority, ESMA and the college referred to in Article 18(1). The CCP's competent authority shall, within 2 working days after such application has been received, acknowledge receipt of the application, stating to the CCP whether it contains the documents required pursuant to Article 14(6) and (7) or, where the CCP has applied for an extension of its authorisation, pursuant to Article 15(3) and (4). […]'	'1. The applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of its authorisation as referred to in Article 15(1) in an electronic format via the central database referred to in paragraph 7. The application shall be immediately shared with the CCP's competent authority, ESMA and the college referred to in Article 18(1). The CCP's competent authority shall, within ~~2~~ **10** working days after such application has been received, acknowledge receipt of the application, stating to the CCP whether it contains the documents required pursuant to Article 14(6) and (7) or, where the CCP has applied for an extension of its authorisation, pursuant to Article 15(3) and (4). […]'
Explanation *The ECB proposes extending the CCP's competent authority's assessment period for the respective*	

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documentation to ten working days. This would ensure that, in all circumstances, a competent authority is able to conduct a solid assessment and pre-empts the risk of unnecessary rejections of EU CCP applications where, in exceptional circumstances, a competent authority may not be able to confirm within two working days that the CCP's application material is complete. *See paragraph 3.1 of the Opinion.*	
Amendment 11 Point (12) of Article 1 of the proposed regulation (Article 17a(1) of EMIR)	
'[…] 1. The non-objection procedure shall apply to non-material changes to a CCP's existing authorisation in any of the following cases where the proposed additional clearing service or activity: (a) fulfils all of the following the conditions: (i) the CCP intends to clear one or more financial instruments belonging to the same classes of financial instruments for which it has been authorised to clear under Articles 14 or 15; (ii) the financial instruments referred to in point (i) are traded on a trading venue for which the CCP already provides clearing services or performs activities; and (iii) the proposed additional clearing service or activity does not involve a payment in a new currency. (b) adds a new Union currency in a class of financial instruments already covered by the CCP's authorisation; or (c) adds one or more additional tenors to a class of financial instruments already covered by the CCP's authorisation provided that the maturity range is not significantly extended.	'[…] 1. The non-objection procedure shall apply to non-material changes to a CCP's existing authorisation in any of the following cases where the proposed additional clearing service or activity: (a) fulfils all of the following the conditions: (i) the CCP intends to clear one or more financial instruments belonging to the same classes of financial instruments for which it has been authorised to clear under Articles 14 or 15; (ii) the financial instruments referred to in point (i) are traded on a trading venue for which the CCP already provides clearing services or performs activities; and (iii) the proposed additional clearing service or activity does not involve a payment in a new currency. ~~(b) adds a new Union currency in a class of financial instruments already covered by the CCP's authorisation;~~ or (~~c~~**b**) adds one or more additional tenors to a class of financial instruments already covered by the CCP's authorisation provided that the maturity range is not significantly extended.

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[…]'	[…]'
Explanation *Adding a new Union currency to a class of financial instruments already covered by the CCP's authorisation may or may not constitute a material change, depending in particular on whether it would require the establishment of dedicated liquidity risk controls, payment or settlement arrangements. Therefore, the ECB suggests addressing the materiality of changes relating to adding new Union currencies in draft regulatory technical standards (see Amendment 12).* *See paragraph 3.2 of the Opinion.*	
Amendment 12 Point (12) of Article 1 of the proposed regulation (Article 17a of EMIR)	
'[…] 2. The CCP's competent authority may, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, also decide to apply the non-objection procedure of this Article where a CCP so requests and where the proposed additional clearing service or activity does not fulfil any of the following conditions: (a) it results in the CCP needing to adapt significantly its operational structure, at any point in the contract cycle: (b) it includes offering contracts that cannot be liquidated in the same manner, such as via direct offer or auction, or together with contracts already cleared by the CCP; (c) it results in the CCP needing to take into account material new contract specifications, such as significant extensions of the ranges of maturities or a new option exercise styles within a category of contracts;	'[…] 2. The CCP's competent authority may, after considering the input of the **college** ~~joint supervisory team set up for that CCP pursuant to Article 23b~~, also decide to apply the non-objection procedure of this Article where a CCP so requests and where the proposed additional clearing service or activity does not fulfil any of the following conditions: (a) it results in the CCP needing to adapt significantly its operational structure, at any point in the contract cycle**;**~~:~~ (b) it includes offering contracts that cannot be liquidated in the same manner, such as via direct offer or auction, or together with contracts already cleared by the CCP; (c) it results in the CCP needing to take into account material new contract specifications, such as significant extensions of the ranges of maturities or a new option exercise styles within a category of contracts;

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(d) it results in the introduction of material new risks, linked to the different characteristics of the assets referenced;	(d) it results in the introduction of material new risks, linked to the different characteristics of the assets referenced;
(e) it includes offering a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, CSD or payment system which the CCP did not previously use.	(e) it includes offering a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, CSD or payment system which the CCP did not previously use.
	ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards further specifying the elements to be considered when assessing the conditions referred to in points (a) to (e) of this paragraph.
	ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].
3. A CCP that submits a request for extension requesting that the non-objection procedure be applied, shall demonstrate why the proposed extension of its business to additional clearing services or activities qualifies under paragraphs 1 or 2 to be assessed under the non-objection procedure. The CCP shall submit its application in an electronic format via the central database referred to in Article 17(7) and shall provide all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the relevant requirements laid down in this Regulation.	**Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**
A CCP that applies for an extension of its authorisation requesting that the non-objection procedure be applied and the proposed additional clearing services or activities fall within the scope of paragraph 1, may start clearing such additional financial instruments or non-financial instruments suitable for clearing before the decision of the CCP's	3. A CCP that submits a request for extension requesting that the non-objection procedure be applied, shall demonstrate why the proposed extension of its business to additional clearing services or activities qualifies under paragraphs 1 or 2 to be assessed under the non-objection procedure. The CCP shall submit its application in an electronic format via the central database referred to in Article 17(7) and shall provide all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the relevant requirements laid down in this

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competent authority pursuant to paragraph 4. 4. Within 10 working days of receipt of an application pursuant to paragraph 2, the CCP's competent authority shall, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, decide whether the application shall be subject to the non-objection procedure set out in this Article or, if the CCP's competent authority has identified material risks as a result of the proposed extension of the CCP's business to additional clearing services or activities, that the procedure set out in Article 17 shall apply. The CCP's competent authority shall notify the applicant CCP of its decision. Where the CCP's competent authority has decided that the procedure set out in Article 17 shall apply, the CCP shall, within 5 working days after receipt of such notification, cease providing such clearing service or activity. […]'	Regulation. ~~A CCP that applies for an extension of its authorisation requesting that the non-objection procedure be applied and the proposed additional clearing services or activities fall within the scope of paragraph 1, may start clearing such additional financial instruments or non-financial instruments suitable for clearing before the decision of the CCP's competent authority pursuant to paragraph 4.~~ 4. Within~~10~~ **20** working days of receipt of an application pursuant to paragraph 2, the CCP's competent authority shall, after considering the input of the **college** ~~joint supervisory team set up for that CCP pursuant to Article 23b~~, decide whether the application shall be subject to the non-objection procedure set out in this Article or, if the CCP's competent authority has identified material risks as a result of the proposed extension of the CCP's business to additional clearing services or activities, that the procedure set out in Article 17 shall apply. The CCP's competent authority shall notify the applicant CCP of its decision. ~~Where the CCP's competent authority has decided that the procedure set out in Article 17 shall apply, the CCP shall, within 5 working days after receipt of such notification, cease providing such clearing service or activity.~~ […]'
Explanation *Adding a new Union currency to a class of financial instruments already covered by the CCP's authorisation may or may not constitute a material change, depending in particular on whether it would require the establishment of dedicated liquidity risk controls, payment or settlement arrangements. Therefore, the ECB suggests addressing the materiality of changes relating to adding new Union currencies in regulatory technical standards.* *In general, considering the novelty of the non-objection procedure, and with a view to ensuring consistent approaches across colleges as well as appropriate safeguards for college members, the conditions for the optional application of the non-objection procedure should be further specified in draft regulatory technical*	

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standards, to be developed by ESMA in close cooperation with the European System of Central Banks (ESCB). *The ECB considers it neither prudent nor operationally sensible to allow EU CCPs to already start providing a clearing service or engaging in an activity before the decision of the competent authority regarding the applicability of the non-objection procedure.* *In the same vein, in order to allow the authorities involved in the substantive assessment underpinning such procedure sufficient time, the ECB proposes to extend the time period from 10 to 20 days.* *Instead of tasking the Joint Supervisory Team (JST) to provide input, the ECB suggests that the college should have the possibility to provide input regarding the application of the non-objection procedure. Additionally, the ECB proposes that the CCP's competent authority should also review the overall application of non-objection procedures on an annual basis, in cooperation with the college (see Amendment 14).* *See paragraphs 1.1.2 and 3.2 of the Opinion.*	

Text proposed by the Commission	Amendments proposed by the ECB[2]
Amendment 13 Article 18(4) of EMIR (new)	
No text	'4. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure: (a) the preparation of the opinion referred to in Article 19; (b) the exchange of information, including requests for information pursuant to Article 84; (c) agreement on the voluntary entrusting of tasks among its members; (d) the coordination of supervisory examination programmes based on a risk assessment of the CCP; and (e) the determination of procedures and contingency plans to address emergency situations, as referred to in Article 24. In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph, members of the college referred to in paragraph 2 shall be entitled to contribute to the setting of the agenda of the college meetings, in particular by adding points to the agenda of a meeting. **For the purpose of adding points to the agenda, the members of the college shall consider the outcome of the work carried out by the Joint Monitoring Mechanism.**'
Explanation *Article 18 of EMIR should be amended to include a requirement for the college members to consider the outcome of the work carried out by the JMM when suggesting topics to be included in the agenda of college meetings. This should aid in following up on the work carried out by the JMM within the existing supervisory framework for the EU CCP, to the extent relevant for that specific CCP's activities or risk profile.* *See paragraph 1.4.2 of the Opinion.*	

Text proposed by the Commission	Amendments proposed by the ECB[2]
Amendment 14 Point (16) of Article 1 of the proposed regulation (Article 21 of EMIR)	
‘(16) Article 21 is amended as follows: (a) paragraph 1 is replaced by the following: “1. The competent authorities referred to in Article 22 shall do all of the following: (a) review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation; (b) review the services or activities the CCP has started providing following the non-objection procedures pursuant to Article 17a or pursuant to Article 49; (c) evaluate the risks, including financial and operational risks, to which CCPs are, or might be, exposed.”; (b) paragraphs 3 and 4 are replaced by the following: “3.The competent authorities shall, after having considered the input of the joint supervisory team set up for that CCP pursuant to Article 23b, establish the frequency and depth of the review and evaluation referred to in paragraph 1 of this Article, having particular regard to the size, systemic importance, nature, scale, complexity of the activities and interconnectedness with other financial market infrastructures of the CCPs concerned and to the supervisory priorities established by ESMA in	‘(16) Article 21 is amended as follows: (a) paragraph 1 is replaced by the following: “1.The competent authorities referred to in Article 22 shall**, in cooperation with the college,** do all of the following: (a) review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation; (b) review the services or activities the CCP has started providing following the non-objection procedures pursuant to Article 17a or pursuant to Article 49; (c) evaluate the risks, including financial and operational risks, to which CCPs are, or might be, exposed.; **(d) prepare a plan for joint supervisory activities pursuant to Article 23b.**”; (b) paragraphs 3 and 4 are replaced by the following: “3.The competent authorities shall, after having considered the input of the ~~joint supervisory team set up for that CCP pursuant to Article 23b~~ **college set up for that CCP pursuant to Article 18**, establish the frequency ~~and~~**,** depth **and substantive focus** of the review and evaluation referred to in paragraph 1 of this Article, having particular regard to the size, systemic importance, nature, scale, complexity of the activities and interconnectedness with other financial market infrastructures of the CCPs concerned and to the supervisory priorities

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accordance with Article 24a(7), first subparagraph, point (ba). The competent authorities shall update the review and evaluation at least on an annual basis. CCPs shall be subject to on-site inspections. Competent authorities shall invite the members of the joint supervisory team set up for that CCP pursuant to Article 23b, to participate in on-site inspections. The competent authority shall forward to the members of the joint supervisory team set up for that CCP pursuant to Article 23b any information received from the CCPs during or in relation to on-site inspections. 4. The competent authorities shall regularly, and at least annually, submit a report to the college on the results of the review and evaluation as referred to in paragraph 1, including whether the competent authority has taken any remedial action or imposed penalties. The competent authorities shall communicate the report covering a calendar year to ESMA by 30 March of the following calendar year. That report shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b."'	established by ESMA in accordance with Article 24a(7), first subparagraph, point (ba). The competent authorities shall update the review and evaluation at least on an annual basis. CCPs shall be subject to on-site inspections. Competent authorities shall invite the members of the ~~joint supervisory team set up for that CCP pursuant to Article 23b~~ **college**~~,~~ to participate in on-site inspections. The competent authority shall forward to the ~~members of the joint supervisory team set up for that CCP pursuant to Article 23b~~ **college the relevant** ~~any~~ information received from the CCPs during or in relation to on-site inspections. 4. The competent authorities shall regularly, and at least annually, submit a report to the college ~~on~~ **that includes both of the following:** **(a)** the results of the review and evaluation as referred to in paragraph 1, including whether the competent authority has taken any remedial action or imposed penalties**;** **(b) a plan for joint supervisory activities pursuant to Article 23b in the following calendar year.** The competent authorities shall communicate the report covering a calendar year to ESMA by 30 March of the following calendar year. That report shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b."'
Explanation *Article 21 of EMIR should be amended further to reflect the ECB's suggestions to the proposed Article 23b of EMIR. Concretely, the EU CCP's college should contribute to the tasks the competent authority of that CCP must carry out pursuant to Article 21. In addition, the proposed joint supervisory activities pursuant to*	

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Article 23b should be embedded in the annual review and evaluation process to provide a framework for discussing and planning these activities. Finally, the involvement of the college should, in addition to establishing the frequency and depth of the annual review, also include input on the substantive focus of the annual review, based on key risks affecting the EU CCP or shortcomings within the its arrangements, strategies, processes and mechanisms, implemented to comply with EMIR. *See paragraph 1.1.2 of the Opinion.*	
Amendment 15 Article 21(4a) of EMIR (new)	
No text	'**4a. For the purposes of carrying out the review and evaluation referred to in paragraph 1, as well as establishing its frequency, depth and substantive focus in accordance with paragraph 3, the competent authorities shall consider the outcome of the work the Joint Monitoring Mechanism must carry out pursuant to Article 23c, to the extent such outcome is relevant for the CCP subject to such review and evaluation.**'
Explanation *Article 21 of EMIR should be amended to include a requirement for the competent authority to consider the outcome of the work the JMM will carry out during the annual review and evaluation process. This ensures that the JMM is a meaningful element within the existing supervisory framework of CCPs and that the JMM's work is duly considered by the competent authorities, to the extent relevant for the specific CCP's activities or risk profile.* *See paragraph 1.4.2 of the Opinion.*	
Amendment 16 Point (18) of Article 1 of the proposed regulation (Article 23b of EMIR)	
'Article 23b Joint Supervisory Teams 1. A joint supervisory team shall be established for	'Article 23b Joint Supervisory ~~Teams~~**Activities** 1. ~~A joint supervisory team shall be established for~~

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the supervision of each CCP authorised under Article 14. Each joint supervisory team shall be composed of staff members from the CCP's competent authority, ESMA and the members of the college referred to in Article 18, points (c), (g) and (h). Other members of the college may also request to participate in the joint supervisory team. Joint supervisory teams shall work under the coordination of a designated competent authority staff member.	~~the supervision of e~~ **E**ach CCP authorised under Article 14~~. Each joint supervisory team shall be composed of staff members from the CCP's competent authority, ESMA and the members of the college referred to in Article 18, points (c), (g) and (h). Other members of the college may also request to participate in the joint supervisory team. Joint supervisory teams shall work under the coordination of a designated competent authority staff member.~~ **shall be subject to joint supervisory activities. These activities shall be coordinated by the CCP's competent authority with the college in the context of the annual review and evaluation process and shall be open for the participation of each college member on a voluntary basis.**
2. The tasks of a joint supervisory team shall include, but are not limited to, all of the following: (a) provide input to the competent authorities, ESMA and the colleges pursuant to Article 17a (2), (4) and (5) and Article 21(3); (b) participate to on-site inspections pursuant to Article 21(3); (c) liaise with competent authorities and members of the college, where relevant; (d) where a CCP's competent authority so requests, provide assistance to that competent authority in assessing the CCP's compliance with the requirements of this Regulation.	2. ~~The tasks of a joint supervisory team~~ **Joint supervisory activities** shall include, but are not limited to, all of the following: (a) provid**inge** input to the competent authorities, ESMA and the colleges pursuant to Article 17a(2), (4) and (5)**,**~~and~~ Article 21(3) **and Article 49(1b)**; (b) participate to on-site inspections pursuant to Article 21(3); (c) ~~liaise with competent authorities and members of the college, where relevant~~ **participating in desktop supervisory assessments**; (d) ~~where a CCP's competent authority so requests, provide assistance to that competent authority in assessing the CCP's compliance with the requirements of this Regulation~~ **contributing to the annual review and evaluation process, carried out by the CCP competent authorities in accordance with Article 21(1)**.
3. The CCP's competent authority shall be in charge of the establishment of joint supervisory teams.	**3. The CCP's competent authority may also coordinate, with input from the college, joint supervisory activities in areas not foreseen at**
4. ESMA and authorities participating to the joint supervisory teams shall consult each other and agree on the use of resources with regard to the joint supervisory teams.	

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[…]'	**the time of the previous annual review, notably with respect to providing assistance to the competent authority in assessing the CCP's compliance with the requirements of this Regulation and assessing any material supervisory concerns that may have arisen since.** ~~3.~~ **4.** The CCP's competent authority shall be in charge of establish~~ment~~**ing** ~~of joint supervisory teams~~ **and coordinating the joint supervisory activities.** ~~4.~~ **5.** ESMA and authorities participating in joint supervisory ~~teams~~ **activities** shall consult each other and agree on the use of resources with regard to the joint supervisory ~~teams~~ **activities**. […]'

Explanation

The ECB suggests amending proposed Article 23b further in order to reap the substantial benefits of the deepening cooperation and pooling of resources in ongoing supervision, without adding the institutional complexity of a new supervisory structure. Instead of setting up JSTs, the proposed tasks would be carried out, as joint supervisory activities, by competent authorities and college members, in line with the respective scope agreed during the annual review and evaluation process. To preserve flexibility with respect to any ad hoc concerns that may arise outside the annual review and evaluation process, the ECB also proposes that the CCP's competent authority and the college may engage in additional joint supervisory activities.

Joint supervisory activities should also be foreseen with respect to input on the non-objection procedure related to the approval of changes in the CCP's margin models, as well as to the conduct of the annual review and evaluation process carried out by the CCP's competent authority.

See paragraph 1.1.2 of the Opinion.

Amendment 17 Point (18) of Article 1 of the proposed regulation (Article 23c(1) of EMIR)	
'1. ESMA shall establish a Joint Monitoring Mechanism for the exercise of the tasks referred to	'1. ESMA shall establish a Joint Monitoring Mechanism for the exercise of the tasks referred to

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in paragraph 2. The Joint Monitoring Mechanism shall be composed of: (a) representatives of ESMA; (b) representatives of EBA and EIOPA; (c) representatives of the Commission, the ESRB, the ECB and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance Council Regulation (EU) No 1024/2013. ESMA shall manage and chair the meetings of the Joint Monitoring Mechanism. The Chair of the Joint Monitoring Mechanism, upon request of the other members of the Joint Monitoring Mechanism or on his own initiative, may invite other authorities to participate in the meetings when relevant to the topics to be discussed.'	in paragraph 2. The Joint Monitoring Mechanism shall be composed of: (a) representatives of ESMA; (b) representatives of EBA and EIOPA; (c) representatives of the Commission, the ESRB, the ECB and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance Council Regulation (EU) No 1024/2013**;** **(d) the central banks of issue of the currencies other than the euro in which the derivative contracts referred to in paragraph 2 of Article 7a are denominated**. ESMA shall manage and chair the meetings of the Joint Monitoring Mechanism. The Chair of the Joint Monitoring Mechanism, upon request of the other members of the Joint Monitoring Mechanism or on his own initiative, may invite other authorities to participate in the meetings when relevant to the topics to be discussed.'
Explanation *One of Joint Monitoring Mechanism's main tasks is to monitor the implementation of the requirements set out in the proposed Articles 7a and 7b. These requirements pertain to certain categories of derivative contracts denominated in euro, as well as in Polish zloty. Therefore, the participation of the relevant central banks in their capacity as central banks of issue is warranted.* *See paragraph 1.4.1 of the Opinion.*	
Amendment 18 Point (18) of Article 1 of the proposed regulation (Article 23c(2) of EMIR)	
'[…]	'[…]

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2. The Joint Monitoring Mechanism shall: (a) monitor the implementation of the requirements set out in Articles 7a and 7b, including all of the following: (i) the overall exposures and reduction of exposures to substantially systemically important clearing services identified pursuant to Article 25(2c); (ii) developments related to clearing in CCPs authorised under Article 14 and access to clearing by clients to such CCPs, including fees charged by such CCPs for establishing accounts pursuant to Article 7a and any fees charged by clearing members to their clients for establishing accounts and undertaking clearing pursuant to Article 7a; (iii) other significant developments in clearing practices having an impact on the level of clearing at CCPs authorised under Article 14; (b) monitor client clearing relationships, including portability and clearing members and clients' interdependencies and interactions with other financial market infrastructures; (c) contribute to the development of Union-wide assessments of the resilience of CCPs focussing on liquidity risks concerning CCPs, clearing members and clients; (d) identify concentration risks, in particular in client clearing, due to the integration of Union financial markets, including where several CCPs, clearing members or clients use the same service providers; (e) monitor the effectiveness of the measures aimed at improving the attractiveness of Union CCPs, encouraging clearing at Union CCPs and enhancing the monitoring of cross-border risks. […]'	2. The Joint Monitoring Mechanism shall: (a) monitor the implementation of the requirements set out in Articles 7a and 7b, including all of the following: (i) the overall exposures and reduction of exposures to substantially systemically important clearing services identified pursuant to Article 25(2c); (ii) developments related to clearing in CCPs authorised under Article 14 and access to clearing by clients to such CCPs, including fees charged by such CCPs for establishing accounts pursuant to Article 7a and any fees charged by clearing members to their clients for establishing accounts and undertaking clearing pursuant to Article 7a; (iii) other significant developments in clearing practices having an impact on the level of clearing at CCPs authorised under Article 14; (b) monitor client clearing relationships, including portability and clearing members and clients' interdependencies and interactions with other financial market infrastructures; (c) contribute to the development of Union-wide assessments of the resilience of CCPs, focussing on **horizontal credit and operational risks as well as** liquidity risks concerning CCPs, clearing members and clients; (d) identify concentration risks, in particular in client clearing, due to the integration of Union financial markets, including where several CCPs, clearing members or clients use the same service providers**, due to clients accessing the same CCP via different clearing members of that CCP, or due to clients maintaining large positions in markets of products that the CCP clears**; (e) monitor the effectiveness of the measures aimed

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	at improving the attractiveness of Union CCPs, encouraging clearing at Union CCPs and enhancing the monitoring of cross-border risks. […]'
Explanation *With a view to maximising the potential of the JMM, in terms of delivering a holistic perspective on risks affecting Union central clearing as a whole, the ECB proposes to extend the scope of the JMM's work. In addition to liquidity risks, the JMM should also carry out Union-wide assessments of credit and operational risks concerning CCPs, clearing members and clients.* *Furthermore, the ECB suggests to expand the JMM's task in relation to identifying concentration risk, including additional aspects of concentration risks that are relevant for central clearing. This inclusion would ensure that such aspects are embedded explicitly in the Union's regulatory framework and monitored accordingly. The inclusion would also improve the visibility of such risks to relevant authorities, leveraging the information that is made available to the JMM for the purposes of its tasks.* *See paragraph 1.4.2 of the Opinion.*	
Amendment 19 Point (18) of Article 1 of the proposed regulation (Article 23c(3) of EMIR)	
'[…] 3. ESMA shall, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, submit an annual report to the European Parliament, the Council and the Commission on the results of its activities pursuant to paragraph 2. […]'	'[…] 3. **Where two or more of the bodies participating to the Joint Monitoring Mechanism consider it helpful, they may use this mechanism as a basis for conducting additional joint work on additional Union-wide cross-sectoral issues of common interest.** **3a.** ESMA shall, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, **and upon consultation of the relevant national competent authorities, prepare and** submit an annual report to the European Parliament, the Council and the Commission on the results of its activities pursuant to paragraph 2. **Where appropriate, this report shall include**

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	recommendations for potential Union-level action to address identified horizontal risks. **The competent authorities shall, in cooperation with the college, duly consider, in the context of the annual review and evaluation process referred to in Article 21, any findings of the Joint Monitoring Mechanism on risks to central clearing.** […]'
Explanation *The annual report on the results of the JMM's activities would benefit from effective input of relevant national competent authorities. Therefore, the ECB proposes that the report is subject to consultation with those relevant national competent authorities prior to its submission to the European Parliament, the Council of the European Union and the Commission by ESMA. Further, to promote effective follow-up on the JMM's analysis, ESMA should include, where appropriate, in its report recommendations for potential Union-level action to address identified horizontal risks. In addition, competent authorities should be required to duly consider any findings of the JMM regarding relevant risks when conducting the annual review and evaluation process of each EU CCP in line with Article 21.* *Finally, given the novelty of the JMM, the ECB sees benefit in giving the bodies participating to the JMM the opportunity to use this framework for conducting joint work on additional Union-wide cross-sectoral issues, where two or more JMM members have an interest to do so.* *See paragraphs 1.4.2 and 4.1.2 of the Opinion.*	
Amendment 20 Point (18) of Article 1 of the proposed regulation (Article 23c(4) of EMIR)	
'[…] 4. ESMA shall act in accordance with Article 17 of Regulation (EU) No 1095/2010 where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein: (a) it considers that competent authorities fail to ensure clearing members' and clients' compliance	'[…] 4. ESMA shall act in accordance with Article 17 of Regulation (EU) No 1095/2010 where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein~~:~~ ~~(a) it considers that competent authorities fail to ensure clearing members' and clients' compliance~~

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with the requirement set out in Article 7a; (b) it identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law. Before acting in accordance with the first subparagraph, ESMA may issue guidelines or recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010. […]'	~~with the requirement set out in Article 7a;~~ ~~(b)~~ it identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law. Before acting in accordance with the first subparagraph, ESMA may issue guidelines or recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010. […]'
Explanation *The reference to ESMA's power to act following the competent authorities' failure to ensure clearing members' and clients' compliance with the requirement under the proposed Article 7a should be deleted.* *First and foremost, the breach of Union law procedure is incompatible with monitoring supervisory actions and convergence on the active account requirement. This is because (i) the details of the active account requirement still remain to be defined, but will likely involve consideration of qualitative factors and/or a phase-in period; and (ii) compliance with the active account requirement will likely depend on a credible plan to be developed under the national law implementing Article 76(2) of Directive 2013/36/EU (meaning that compliance with Union law will depend on the national transposition of a directive), the assessment of which involves the consideration of complex trade-offs. ESMA also acknowledges this in its assessment pursuant to Article 25(2c) of EMIR, which also mentions potential financial stability risks from a sudden transfer of trades too quickly from third-country CCPs to EU CCPs[7]. Considering all the above, the ECB finds it difficult to support the argument that the procedure for breach of Union law is suitable, necessary and proportionate to ensure supervisory convergence on the active account requirements.* *Second, even if the breach of Union law procedure were deemed suitable for this requirement, the existing framework of Article 17 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[8] is sufficient where ESMA is asked, or decides on its own initiative, to trigger such procedure. A repetition of this power for the active account requirement only is superfluous and puts in question whether there is a hierarchy of objectives of Union law depending on whether a procedure for a breach of Union law is initiated for that specific objective.*	

[7] See Assessment Report under Article 25(2c) of EMIR, ESMA, 16 December 2021, available on ESMA's website at www.esma.europa.eu.

[8] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p. 84).

Text proposed by the Commission	Amendments proposed by the ECB[2]
Amendment 21 Point (19) of Article 1 of the proposed regulation (Article 24(4) of EMIR)	
'[…] 4. Any of the following authorities may also be invited to the meeting referred to in paragraph 3, where relevant, considering the issues to be discussed at the meeting: (a) the relevant central banks of issue; (b) the relevant competent authorities for the supervision of clearing members the relevant competent authorities for the supervision of clearing members, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013; (c) the relevant competent authorities for the supervision of trading venues; (d) the relevant competent authorities for the supervision of clients where they are known (e) the relevant resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23. Where a meeting of the CCP Supervisory Committee is held pursuant to the first subparagraph, the Chair shall inform EBA, EIOPA, the ESRB and the Commission thereof who shall also be invited to participate to that meeting upon their request. […]'	'[…] 4. Any of the following authorities may also be invited to the meeting referred to in paragraph 3, where relevant, considering the issues to be discussed at the meeting: (a) the relevant central banks of issue; (b) the relevant competent authorities for the supervision of clearing members the relevant competent authorities for the supervision of clearing members, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013; (c) the relevant competent authorities for the supervision of trading venues; (d) the relevant competent authorities for the supervision of clients where they are known (e) the relevant resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23. Where a meeting of the CCP Supervisory Committee is held pursuant to the first subparagraph, the Chair shall inform EBA, EIOPA, the ESRB and the Commission thereof who shall also be invited to participate to that meeting upon their request. **Where a meeting is held following an emergency situation as specified in paragraph 1, point (c), the Chair shall always invite the relevant central banks of issue to participate to that meeting.**

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	[…]'
Explanation *Developments in financial markets, which may have an adverse effect on market liquidity, the transmission of monetary policy, the smooth operation of payment systems or the stability of the financial system in any of the Member States where EU CCPs or one of their clearing members are established, could have direct implications for the performance of the responsibilities of the relevant central banks of issue. The relevant central banks of issue may also be able to provide additional insights on such developments. Therefore, the ECB proposes that the relevant central banks of issue should always be invited to participate in the coordination meetings of the CCP Supervisory Committee in response to such emergencies.* *See paragraph 1.2.2 of the Opinion.*	
Amendment 22 Article 24a(2), point (e), of EMIR (new)	
No text	'**(e) the competent authorities responsible for the supervision of the three clearing members with the largest contributions, calculated on an aggregate basis over a one-year period, to the default fund, referred to in Article 42 of this Regulation, of each of the CCPs authorised in accordance with Article 14 or recognised in accordance with Article 25 of this Regulation, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the Single Supervisory Mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013, who shall be non-voting.**'
Explanation *The ECB proposes to further amend Article 24a of EMIR in order to include the supervisory authorities of the three clearing members with the largest contributions to the CCP's default fund as non-voting, permanent members of the CCP Supervisory Committee. The proposed amendment also explicitly refers to the ECB in its capacity as a prudential supervisor, in line with the other provisions of EMIR. The participation of supervisors in the CCP Supervisory Committee will support identifying and addressing the risks resulting from the nexus between banks and CCPs.*	

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See paragraph 1.3.2 of the Opinion.	
Amendment 23 Article 24b of EMIR (new)	
No text	‘Article 24b Consultation of central banks of issue 1. With regard to **supervisory assessments conducted in relation to and** decisions to be taken pursuant to Articles 41, 44, 46, **49,** 50 and 54 in relation to Tier 2 CCPs, the CCP Supervisory Committee shall consult the central banks of issue referred to in point (f) of Article 25(3). Each central bank of issue may respond. Any response shall be received within 10 working days of the **receipt of the consultation request** ~~transmission of the draft decision~~. In emergency situations, the aforementioned period shall not exceed 24 hours. Where a central bank of issue proposes amendments or objects to draft **assessments related to or** decisions pursuant to Articles 41, 44, 46, **49,** 50 and 54, it shall provide full and detailed reasons, in writing. Upon conclusion of the period for consultation, the CCP Supervisory Committee shall duly consider the **response from** ~~amendments proposed by~~ the central banks of issue. 2. Where the CCP Supervisory Committee does not reflect in its draft **assessment or** decision the **response from** ~~amendments proposed by~~ a central bank of issue, the CCP Supervisory Committee shall inform that central bank of issue in writing stating its full reasons for not taking into account the **response of** ~~amendments proposed by~~ that central bank of issue, providing an explanation for any deviations from **the response of the central bank of issue** ~~those amendments~~. The CCP Supervisory Committee shall submit to the Board of Supervisors

Text proposed by the Commission	Amendments proposed by the ECB[2]
	the **responses of** ~~amendments proposed by~~ central banks of issue and its explanations for not taking them into account together with its draft decision. […]'
Explanation *With respect to consultations by the CCP Supervisory Committee of the relevant central bank of issue, the wording of EMIR appears to be ambiguous. In particular, Articles 41, 44, 46, 50 and 54 of EMIR do not refer to any specific decision-making procedures or supervisory procedures under EMIR, but rather to areas with potential relevance for a central bank of issue. Furthermore, as not all supervisory assessments and procedures may lead to formal decisions of the CCP Supervisory Committee, the involvement of a central bank of issue in relation to areas with potential relevance for its tasks and mandates would not necessarily be triggered on the basis of the provisions' current wording. For these reasons, the ECB suggests several clarifying edits in order to ensure sufficient engagement with central banks of issue on areas related to margins, liquidity risk controls, collateral, and settlement and interoperability arrangements for all relevant supervisory activities and procedures, including validations and assessments conducted for Tier 2 third-country CCPs on the basis of Article 49 of EMIR.* *See paragraph 1.5 of the Opinion.*	
Amendment 24 Article 25b(1), first subparagraph, of EMIR (new)	
No text	'1. ESMA shall be responsible for carrying out the duties resulting from this Regulation for the supervision on an ongoing basis of the compliance of recognised Tier 2 CCPs with the requirements referred to in point (a) of Article 25(2b). With regard to **supervisory assessments conducted in relation to or** decisions pursuant to Articles 41, 44, 46, **49**, 50 and 54, ESMA shall consult the central banks of issue referred to in point (f) of Article 25(3) in accordance with Article 24b(1). '
Explanation *See explanation for Amendment 23.* *See paragraph 1.5 of the Opinion.*	

Text proposed by the Commission	Amendments proposed by the ECB[2]
Amendment 25 Point (29)(c) of Article 1 of the proposed regulation (Article 37(7) of EMIR)	
'7. ESMA shall, after having consulted the EBA, develop draft regulatory technical standards further specifying the elements to be considered when laying down the admission criteria referred to in paragraph 1. ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please enter 12 months after entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010".'	'7. ESMA shall, after having consulted EBA **and the ESCB**, develop draft regulatory technical standards further specifying: **(i)** the elements to be considered when laying down the admission criteria referred to in paragraph 1; **and** **(ii) the participation requirements for accepting non-financial counterparties as clearing members in accordance with paragraph 1a**. ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please enter 12 months after entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'
Explanation *ESMA's mandate to develop the relevant draft regulatory technical standards should also extend to non-financial counterparties' direct access to a CCP. As rightly highlighted by the Commission's proposal, the liquidity profile of such types of counterparties should need to be more carefully assessed by a CCP, especially whether they are able to meet potential increases in margin requirements or default fund contributions on a timely basis, even under stressed market conditions. Additionally, the ECB suggests consulting the members of the ESCB alongside the European Banking Authority (EBA) for the development of these draft regulatory technical standards.* *See paragraph 2.1.1 of the Opinion.*	
Amendment 26 Point (32) of Article 1 of the proposed regulation (Article 44(1) of EMIR)	
'A CCP shall measure, on a daily basis, its potential liquidity needs. It shall take into account the liquidity	'A CCP shall measure, on a daily basis, its potential liquidity needs. It shall take into account

Text proposed by the Commission	Amendments proposed by the ECB[2]
risk generated by the default of at least the two entities, including clearing members or liquidity providers, to which it has the largest exposures.';	the liquidity risk generated by the default of at least the two entities, including clearing members or liquidity providers, to which it has the largest exposures **in aggregate for all currencies and separately for each of the most relevant Union currencies of the financial instruments cleared**.';
Explanation *Currently, potential liquidity needs generated by the default of at least the two clearing members to which a CCP has the largest exposures are calculated globally. Such a calculation does not necessarily provide for a split across individual currencies. To improve transparency and data availability, also for the purpose of supervision and monitoring, the ECB proposes that the CCP's calculation should include the largest payment obligations for each of the most relevant Union currencies separately. This approach would lead to a more accurate measurement of liquidity risk in each Union currency, allowing CCPs' competent authorities to better perform their supervisory tasks, as well as the relevant central banks of issue to consider the impact of a potential default event on financial stability, the implementation of monetary policy and the smooth operation of payment systems.* *See paragraph 2.1.5 of the Opinion.*	
Amendment 27 Article 38(9) of EMIR (new)	
No text	'**9. ESMA shall, in consultation with EBA and the ESCB, develop draft regulatory technical standards further specifying the information to be provided pursuant to paragraphs 6, 7 and 8.** **ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please enter 12 months after entry into force of this Regulation].** **Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**'
Explanation	

Text proposed by the Commission	Amendments proposed by the ECB[2]
The ECB proposes to mandate ESMA, in consultation with EBA and the members of the ESCB, to develop draft regulatory technical standards in relation to transparency requirements applicable to CCPs and client clearing service providers. This would considerably enhance the standardisation and the quality of such disclosures. These draft regulatory technical standards would also ensure effective interaction between CCPs and client clearing service providers concerning their respective margin practices disclosure responsibilities. Furthermore, ongoing international work under the auspices of the Basel Committee on Banking Supervision, the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions may result in further elaborations with respect to margin transparency, in particular the elements referred to in paragraphs 6 to 8 of Article 38 of EMIR. *See paragraph 2.1.2 of the Opinion.*	
Amendment 28 Point (33) of Article 1 of the proposed regulation (Article 46 of EMIR)	
‘(a) paragraph 1 is replaced by the following: “1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. A CCP may accept public guarantees or public bank or commercial bank guarantees, provided that they are unconditionally available upon request within the liquidation period referred to in Article 41. Where bank guarantees are provided to a CCP, that CCP shall take them into account when calculating its exposure to the bank that is also a clearing member. The CCP shall apply adequate haircuts to asset values and guarantees to reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. When revising the level of the haircuts it applies to	‘(a) paragraph 1 is replaced by the following: “1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. A CCP may accept public guarantees or public bank ~~or commercial bank~~ guarantees. **For non-financial counterparties, a CCP may accept commercial bank guarantees. Any guarantee a CCP accepts as collateral shall be committed and**~~, provided that they are~~ unconditionally available upon request within the liquidation period referred to in Article 41. Where bank guarantees are provided to a CCP, that CCP shall take them into account when calculating its exposure to the bank that is also a clearing member. The CCP shall apply adequate haircuts to asset values and guarantees to reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on

Text proposed by the Commission	Amendments proposed by the ECB[2]
the assets it accepts as collateral, the CCP shall take into account any potential procyclicality effects of such revisions.”;	certain assets that may result in establishing the acceptable collateral and the relevant haircuts. When revising the level of the haircuts it applies to the assets it accepts as collateral, the CCP shall take into account any potential procyclicality effects of such revisions.”;
(b) in paragraph 3, first subparagraph, point (b) is replaced by the following:	(b) in paragraph 3, first subparagraph, point**s** (b) **and (c) are** ~~is~~ replaced by the following:
“(b) the haircuts referred to in paragraph 1, taking into account the objective to limit their procyclicality; and”’	“(b) the haircuts referred to in paragraph 1, taking into account the objective to limit their procyclicality; and”; “**(c) the conditions under which public guarantees, public bank guarantees and commercial bank guarantees may be accepted as collateral under paragraph 1.**”’
Explanation *The ECB acknowledges the Union’s regulatory efforts to alleviate exceptional liquidity stresses stemming from unprecedented market volatility during recent times However, revisions to the eligibility of uncollateralised bank guarantees should be considered only as a temporary regulatory measure, targeted at non-financial counterparties. The possibility to accept uncollateralised commercial bank guarantees from any type of clearing members on a permanent basis would represent a structural shift in the regulatory risk tolerance that does not appear to be linked to recent market events (i.e., the temporary and exceptional liquidity stresses of non-banks). In addition, the ECB suggests to extend the scope of the related draft regulatory technical standards to public guarantees and public bank guarantees.* *See paragraph 2.1.3 of the Opinion.*	
Amendment 29 Point (34)(a) of Article 1 of the proposed regulation (Article 49(1b) of EMIR)	
‘[…]	‘[…]

Text proposed by the Commission	Amendments proposed by the ECB[2]
1b. Within 10 working days of the date referred to in the third subparagraph of paragraph 1a, the competent authority and ESMA shall assess if the proposed change qualifies as a significant change pursuant to paragraph 1g. Where one of them concludes that the change meets one of the conditions referred to in paragraph 1g, the application shall be assessed under paragraphs 1c, 1d and1e and the CCP's competent authority, in cooperation with ESMA, shall inform in writing the applicant CCP thereof. […]'	1b. Within ~~10~~ **20** working days of the date referred to in the third subparagraph of paragraph 1a, the competent authority and ESMA**, after considering the input of the college,** shall assess if the proposed change qualifies as a significant change pursuant to paragraph 1g. Where one of them concludes that the change meets one of the conditions referred to in paragraph 1g, the application shall be assessed under paragraphs 1c, 1d and 1e and the CCP's competent authority, in cooperation with ESMA, shall inform in writing the applicant CCP thereof. […]'
Explanation *The amendments proposed to Article 49(1b) of EMIR should be complemented to reflect the amendments the ECB suggests to Article 23b of EMIR with regard to the joint supervisory activities. Concretely, the college should be enabled to provide input on the application of the non-objection procedure to the model change requested by the CCP.* *Further, in accordance with Amendment 12, the ECB suggests extending the time period of the assessment from 10 to 20 days, in order to allow sufficient time to the competent authorities to examine and discuss the information submitted by the CCP regarding the applicability of such procedure.* *See paragraph 1.1.2 of the Opinion.*	
Amendment 30 Point (37)(b) of Article 1 of the proposed regulation (Article 85(1b) of EMIR)	
'1b. By [PO: please insert the date = 1 year after the entry into force of this Regulation] ESMA shall submit a report to the Commission on the possibility and feasibility to require the segregation of accounts across the clearing chain of non-financial and financial counterparties. The report shall be accompanied by a cost-benefit analysis.'	'1b. By [PO: please insert the date = 1 year after the entry into force of this Regulation] ESMA shall submit a report to the Commission on the possibility and feasibility to require the segregation of **assets and positions held for the** accounts ~~across the clearing chain~~ of non-financial and financial counterparties **as clients**. The report shall be accompanied by a cost-benefit analysis.'

Text proposed by the Commission	Amendments proposed by the ECB[2]
Explanation *Without prejudging the conclusions of ESMA's report, the ECB proposes to clarify the context of the report's scope, in particular as certain segregation requirements already apply under Article 39 of EMIR. The ECB's suggested amendments aim at describing more precisely that the report should in fact analyse whether to introduce an enhanced level of mandatory segregation between non-financial and financial counterparties as clients.* *See paragraph 2.1.1 of the Opinion.*	

Part II: drafting proposals on the proposed directive

Text proposed by the Commission	Amendments proposed by the ECB
Amendment 1 Recital 2 of the proposed directive	
'(2) To contribute to the objectives of the Capital Markets Union it is necessary, for the efficient use of CCPs, to address certain impediments to the use of central clearing in Directive 2009/65/EU and to provide clarifications in Directives 2013/36/EU, and (EU) 2019/2034. The excessive reliance of the Union financial system on systemically important third-country CCPs (Tier 2 CCPs) could pose financial stability concerns that needs to be addressed appropriately. To ensure the financial stability in the Union and adequately mitigate potential risks of contagion across the Union financial system, appropriate measures should therefore be introduced to foster the identification, management and monitoring of concentration risk arising from exposures towards CCPs. In that context, Directives 2013/36/EU and (EU) 2019/2034 should be amended to encourage institutions and investment firms to take the necessary steps to adapt their business model to ensure the consistency with the new requirements for clearing introduced by the revision of Regulation (EU) No 648/2012 and to overall enhance their risk management practices, also considering the nature, scope and complexity of their market activities. Whilst competent authorities can already impose additional own funds requirements for risks that are not or not adequately covered by the existing capital requirements, they should be better equipped with additional, more granular, tools and powers under the Pillar 2 to enable them to take suitable and decisive actions based on the conclusions of their	'(2) To contribute to the objectives of the Capital Markets Union it is necessary, for the efficient use of CCPs, to address certain impediments to the use of central clearing in Directive 2009/65/EU and to provide clarifications in Directives 2013/36/EU, and (EU) 2019/2034. The excessive reliance of the Union financial system on systemically important third-country CCPs (Tier 2 CCPs) could pose financial stability concerns that need to be addressed appropriately. To ensure the financial stability in the Union and adequately mitigate potential risks of contagion across the Union financial system, appropriate measures should therefore be introduced to foster the identification, management and monitoring of concentration risk arising from exposures towards CCPs. In that context, Directives 2013/36/EU and (EU) 2019/2034 should be amended to encourage institutions and investment firms to take the necessary steps to adapt their business model to ensure the consistency with the new requirements for clearing introduced by the revision of Regulation (EU) No 648/2012 and to overall enhance their risk management practices, also considering the nature, scope and complexity of their market activities. **Directives 2013/36/EU and (EU) 2019/2034 should also be amended to empower** ~~Whilst~~ competent authorities **to address any excessive concentration risk that may arise from the exposures of the credit institutions and investment firms under their supervision towards CCPs, in particular third-country CCPs that are of substantial systemic importance to**

Text proposed by the Commission	Amendments proposed by the ECB
supervisory assessments. ’	**the Union or one or more of its Member States and offer services identified as being of substantial systemic importance by the European Securities and Markets Authority.** ~~can already impose additional own funds requirements for risks that are not or not adequately covered by the existing capital requirements,~~ **Furthermore, competent authorities** ~~they~~ should be better equipped with additional, more granular, tools and powers under Pillar 2 to enable them to take suitable ~~and decisive~~ actions based on the conclusions of their supervisory assessments.’
Explanation *Article 104 of Directive 2013/36/EU provides a supervisory toolbox to competent authorities that is not limited to the imposition of additional capital requirements. The reference to the Pillar 2 tools and powers in this recital should remain broad, as it is not suitable to determine ex ante which of these tools and powers would be appropriate to address excessive concentration risk in this context.* *See paragraph 4.1.2 of the Opinion.*	
Amendment 2 Recital 2a of the proposed directive (new)	
No text	‘**Competent authorities should be empowered to review the plans which credit institutions and investment firms are required to develop, taking into account the methodology for the calibration of the active account requirement. To appropriately review such plans, competent authorities should have at their disposal the details of the level of substantially systemic clearing services to be maintained in the active accounts in the Union CCPs by financial and non-financial counterparties subject to the clearing obligation defined pursuant to Article 7a(5) of Regulation (EU) No 648/2012.**’
Explanation	

Text proposed by the Commission	Amendments proposed by the ECB
The application of the proposed Pillar 2 framework is conditioned on the active account requirement. On that basis, competent authorities can only implement the proposed supervisory powers regarding the supervised entities' plans where full transparency on the calibration of the active account is achieved via the publication and endorsement of ESMA's draft regulatory technical standards (under the proposed Article 7a(5) of EMIR). *See paragraph 4.1.2 of the Opinion.*	
Amendment 3 Point (3) of Article 2 of the proposed directive (Article 81 of Directive 2013/36/EU)	
'Competent authorities shall assess and monitor developments of institutions' practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 76(2) of this Directive, as well as the progress made in adapting the institutions' business models to the relevant policy objectives of the Union, taking into account the requirements set out in Article 7a of Regulation (EU) No 648/2012'	'Competent authorities shall assess and monitor developments of institutions' practices concerning the management of their concentration risk arising from exposures towards central counterparties, including the plans developed in accordance with Article 76(2) of this Directive, ~~as well as the progress made in adapting the institutions' business models to the relevant policy objectives of the Union,~~ taking into account the requirements set out in Article 7a **and any relevant information provided by the Joint Monitoring Mechanism in accordance with Article 23c** of Regulation (EU) No 648/2012.'~~.~~
Explanation *The JMM is tasked with the monitoring of the active account requirement, as well as more broadly with the identification and monitoring of any potential risks, including concentration risks, arising from the interconnectedness of the various financial actors. Taking the results of such monitoring into account would enhance the assessment of competent authorities regarding the concentration risk institutions under their supervision may face towards services of substantial systemic importance provided by third-country CCPs. Further, while the assessment of concentration risk potentially impacting the safety and soundness of an individual institution is within the competent authority's remit, the adaptation of business plans to adjust to wider Union policy objectives is not.* *See paragraph 4.1.2 of the Opinion.*	

Text proposed by the Commission	Amendments proposed by the ECB
Amendment 4 Point (4) of Article 2 of the proposed directive (Article 100 of Directive 2013/36/EU)	
'in Article 100, the following paragraph [5] is added: "[5]. EBA, in accordance with Article 16 of Regulation (EU) No 1093/2010, in coordination with ESMA, in accordance with Article 16 of Regulation (EU) No 1095/2010, shall develop guidelines to ensure a consistent methodology for integrating the concentration risk arising from exposures towards central counterparties in the supervisory stress testing."'	'~~in Article 100, the following paragraph [5] is added: "[5]. EBA, in accordance with Article 16 of Regulation (EU) No 1093/2010, in coordination with ESMA, in accordance with Article 16 of Regulation (EU) No 1095/2010, shall develop guidelines to ensure a consistent methodology for integrating the concentration risk arising from exposures towards central counterparties in the supervisory stress testing."~~'
Explanation *Article 100 of Directive 2013/36/EU aims at ensuring that, on at least an annual basis, competent authorities carry out supervisory stress tests on institutions they supervise, using common methodologies. EBA is mandated to issue guidelines ensuring such common methodologies. As such Article 100 is not risk-specific and therefore additional standalone guidelines to cover a particular risk should not be required. Furthermore, such guidelines could hardly be reconciled with the objective to encourage central clearing in the Union, which would increase the degree of concentration towards EU CCPs.* *See paragraph 4.1.2 of the Opinion.*	
Amendment 5 Point (5)(a) of Article 2 of the proposed directive (Article 104(1) of Directive 2013/36/EU)	
'For the purposes of Article 97, Article 98(1), point (b), Article 98(4), (5) and (9), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:'	'For the purposes of Article 97, Article 98(1), point (b), Article 98(4), (5) and (**~~7~~9**), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:'
Explanation *Article 98 of Directive 2013/36/EU does not contain paragraph 9. The ECB understands that the intention*	

Text proposed by the Commission	Amendments proposed by the ECB
is to refer to paragraph 7 instead.	