EACH Response – European Commission targeted consultation on integration of EU capital markets

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Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 18 members from 14 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH Members greatly appreciate the opportunity to provide feedback to the Targeted Consultation on integration of EU capital markets[1]. This response reflects our commitment to support a more harmonised EU capital market, and ensure efficient and robust risk management while removing those barriers that currently hamper EU CCPs' competitiveness at international level.

The key messages that EACH Members would like to put forward are the following:

- **Supervision** – EACH Members point out that the EMIR 3 supervisory system for CCPs came into force relatively recently in December 2024. It is therefore still being tested at this initial stage of application and it may be too early to objectively analyse its implications. Nevertheless, there is a majority support within the EACH Membership in favour of a more centralised supervision for CCPs in the EU to different degrees, although certain CCPs have expressed support towards the EMIR 3 status quo. EACH Members would also like to caution against models such as regional supervisory hubs or establishing supervisory colleges with enhanced powers.
- **Recommendations on possible streamlining and simplification of EU law** – EACH supports removing overlapping reporting requirements between different legislations such as EMIR, REMIT, MAR, MiFID and MiFIR, as well as ensuring a level playing field between EU and non-EU CCPs and non-centrally cleared markets, especially in the context of requirements concerning e.g. anti-procyclicality and margin transparency. EACH also calls for the implementation of the appropriate measures to incentivise clearing by fund managers, insurers and public entities, as well as a reflection on how the principle of proportionality is applied in the context of the DORA framework. Furthermore, Members put forward detailed proposals linked to the ESMA Draft RTS on EMIR 3 approval procedures, underlining the need for leaner and clearer processes.
- **Lowering barriers in post-trading** – EACH Members propose to create incentives for the missing Member States and market participants to migrate flows to T2S. Furthermore, we suggest a series of changes to the SFD and FCD legislations, such as need to ensure protection under the SFD for all CCPs/clearing houses for their default management rules, as well as the necessity to expand the list of collateral eligible under the FCD to cover all assets acceptable as collateral.
- **Outsourcing and DLT** – EACH calls for a clear guidance based on existing rules in the context of outsourcing, and provides an analysis of the advantages and drawbacks of regarding the use of DLT in the clearing sector.

[1] https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-integration-eu-capital-markets-2025_en

1. Simplification and burden reduction

Q1. Is there a need for greater proportionality in the EU regulatory framework related to the trade, post- trade, asset management and funds sectors? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If yes, please explain and provide suggestion on what form it should take.

1	2	3	4	5	No opinion
		x			

It is EACH Members' experience that, although there are also instances for greater proportionality at Level 1, as outlined throughout the EACH response, even **greater proportionality would be needed in Level 2**, where we often see overly complex and unnecessarily detailed provisions. Examples are the **consultations on the ESMA Draft RTS on EMIR 3 Art. 15 & 17**[2] (authorisation of new CCP products and services) and the **ESMA Draft RTS on EMIR 3 Art. 49 & 49a**[3] (approval of changes to risk models). Conscious of the fact that the draft RTS have not yet been finalised, EACH would like to put forward the following comments, as we believe that the content of the Draft RTS fails to comply with the overall objective of having leaner, clearer and not unduly complex, burdensome and disproportionate procedures:

- **EACH views on ESMA Draft RTS on EMIR 3 Art. 15 & 17**[4]
    - **Slower procedures** – With the proposed wording of the Draft RTS, we are afraid that the accelerated procedure under Art. 17a and the exempted procedure under Art. 15a would in practice not make procedures faster as their conditions are too restrictive.
    - **Additional procedures to become the norm** – We think that the extension of authorisation subject to approval procedures would become the norm, even for products that do not bring any additional risk to CCPs. Minor extensions would mostly be classified as non-material extensions and consequently also be subject to the process under Art. 17a. Further, extensions that we would view as non-material would very likely be classified as material – as it is very likely that one of the conditions proposed will be met most of the time.
    - **Unnecessary regulatory burden** – We believe that the list of conditions for exemption from authorisation under Art. 15a of EMIR is excessively cumulative and restrictive. Additionally, the linguistic finalization is from our point of view too narrow, leaving little room for cases that do not fit with the proposed criteria.

[2] https://www.esma.europa.eu/sites/default/files/2025-02/ESMA91-1505572268-4009_Consultation_Paper_Extensions_of_authorisation_conditions_and_list_of_documents.pdf
[3] https://www.esma.europa.eu/sites/default/files/2025-02/ESMA91-1505572268-4010_Consultation_Paper_Validations_of_changes_to_models_and_parameters_conditions_and_list_of_documents.pdf
[4] https://eachccp.eu/wp-content/uploads/2025/04/ESMA_EXTE_EACH.pdf

  - **Unnecessary burdened governance** – The proposals regarding documentation requirements (e.g. assessment of the compliance of the new service or activity with relevant requirements set out in EMIR; the current ongoing supervision and the review process ac-cording to Art. 21 EMIR are sufficient) are, from our point of view, far too extensive and go beyond the current regulatory requirements. This requirement would add more governance, which will be disproportionate to the level of risk and is inconsistent with the objectives of an accelerated approach.

- **ESMA Draft RTS on Art. 49 & 49a**[5]
  - **Unnecessary increase of regulatory burden** – Given the narrow scope definition for non-significant changes, a larger number of changes will be classified as significant and therefore be subject to the Art. 49 process. Changes that are currently not subject an approval procedure would be classified as non-significant and therefore be subject to the Art. 49a accelerated procedure, which does not exist under the current Art. 49 regime. Although the new classification or idea of an accelerated approach is welcome, it should be focused on speeding up the process for approval which today take longer, and not slow down the approval process for changes which are nowadays not subject to an approval procedure.
  - **Negatively impact risk incentives** – Some of the significant criteria in Art. 1 to 7 are not coherently set and may create the wrong incentives for CCP risk managers. For instance, the 5% threshold under Art. 7 is inconsistent with Art. 1 which is based on total pre-funded resources. The total value of the collateral required by this article is a reflection of the total pre-funded requirements, hence Art. 7 condition should be aligned with Art. 1 to ensure the equivalent or same risk measures are treated in a consistent manner. Art. 4, instead, requires the assessment per default fund segment. This may disincentivize CCPs from using segmentation, which is an important tool for CCPs to allocate risk to where it originates in the waterfall.
  - **Unnecessary burdened governance** – Documents required from CCPs in the submission processes and governance around them are from our point of view too detailed, adding unnecessary burdens on CCPs. For example, Art. 12 requires Board approval. This will add unnecessary governance, which will be disproportional to the level of risk and is inconsistent with the objectives of an accelerated approach. Similarly, Art. 14 asks for a fully planned timeline. However, a detailed implementation plan does not help the understanding of a change to a risk model or parameter. A simple high-level milestone plan would suffice. Lastly, the 12 months of testing results required by Art. 17 may not be available, especially for model changes related to a new product with limited data.
  - **Duplicate requirements** – The requirement to simulate the entire risk framework under a proposed model change calculated over a continuous period of 6 months for all

[5] https://eachccp.eu/wp-content/uploads/2025/04/ESMA_VALID_EACH.pdf

production portfolios, in a manner that is production-parallel, is costly and may not deliver the expected outcomes. The compliance with Art. 10 would require major technological change and investment at the CCPs pre-dating regulatory application, including IT infra-structure, which would in itself extend the approval timeline. Additionally, this simulation would be required for every single model change, irrespective of how immaterial or significant they might be. We consider it would be beneficial to focus the submission on what is a must have for assessing a requested change to a model or parameter.

Q4. Are there any barriers that could be addressed by turning (certain provisions of) the Alternative Investment Fund Managers Directive (AIFMD), Financial Collateral Directive (FCD), Markets in Financial Instruments Directive (MiFID), Undertakings for Collective Investment in Transferable Securities Directive (UCITSD), Settlement Finality Directive (SFD) into a Regulation? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain which barriers and how a Regulation could remove the barrier.

1	2	3	4	5	No opinion
	x				

Please explain.

EACH Members are of the option that the **Financial Collateral Directive (FCD)** and the **Settlement Finality Directive (SFD) should be turned into Regulations** in order to minimise as much as possible the risk of having different implementations in each Member State.

Q5. Are there areas that would benefit from simplification in the interplay between different EU regulatory frameworks (e.g. between asset management framework and MiFID)? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. If you agree, please explain and provide suggestions for simplification. Also if possible present estimates of the resulting cost savings.

1	2	3	4	5	No opinion
	x				

An example of simplification in the interplay between different EU regulatory frameworks concerns the

overlapping reporting requirements between EMIR[6], MiFIR[7], REMIT[8], MiFID[9], and MAR[10].

Overlapping data requirements and reports create redundant effort. Examples include **identical data fields** reported under Art. 9 EMIR and Art. 8 REMIT, and ETD transaction reporting under both Art. 9 EMIR and Art. 26 MiFIR. Further complexity arises from **redundant reporting regarding energy derivatives**. This is even more burdensome considering that many entities are in addition subject to overlapping non-EU regimes (US, Japan, Canada) since equivalence is only given one way. For each reporting obligation, several IT connections with numerous supervisory authorities such as ACER, ESMA, EC, Trade Repositories (TRs) and national competent authorities (NCAs) or even non-EU authorities are necessary.

Furthermore, reporting requirements are often in the form of an **Excel spreadsheet, which is not a suitable tool for reporting**. In order to minimise the unnecessary effort of formatting and validating Excels, an automated reporting tool should be provided by the ESAs.

In addition, concerning the **DORA legislation**[11], the Register of Information's objective is to provide internationally comparable data that would allow the ESAs to identify the critical ICT third-party service providers. However, the **set-up of the Register of Information has not proved to be effective in all cases**. Some NCAs provided national templates which EACH Members very much appreciated, while some financial entities experienced less support and designed the Register of Information themselves. In addition, there have been significant changes to the template compared to the Dry Run on the Register of Information, and it is not clear if the current template will remain the same in the future. As different templates limit comparability, EACH would appreciate a harmonization of data field required as part of notifications to the Register to facilitate an EU-wide approach.

Finally, as already stated in the ACER Response to the European Commission's public consultation on commodity derivatives markets[12], the **wholesale energy market and the capital market are fundamentally different**. While the capital markets focus on trading, the energy markets ensure the supply and transmission of energy and are subject to real-time physical balancing. For this reason, a targeted European legislative framework has been introduced, comprising, for example, REMIT and the Regulation (EU) 2015/1222[13] ("**CACM Regulation**"), which address the specificities of physical markets. This targeted framework should be upheld.

For CCPs active in wholesale energy markets, the CACM Regulation is already applicable. This

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648
[7] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600
[8] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1227
[9] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065
[10] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596
[11] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2554
[12] https://www.acer.europa.eu/sites/default/files/documents/Position%20Papers/ACER-response-PC-derivatives-markets-2025.pdf
[13] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1222

Regulation designates NCAs for spot energy clearing which are different from the NCAs designated by EMIR. Further regulation of spot energy clearing under EMIR may create situations of market distortions, as **several EMIR provisions on risk management are not applicable to spot energy products**, and may as well constitute a significant barrier to local energy suppliers entering the market.

Q7. Do you have other recommendations on possible streamlining and simplification of EU law, national law or supervisory practices and going beyond cross-border provision?

Yes. In addition to our input included in the answer to Q1 regarding the ESMA consultations on EMIR 3 Draft RTS Art. 15, 17 and 49, other issues that deserve being mentioned are the following:

- **<u>DORA provisions contrary to the principle of proportionality</u>**
    - The exclusion of all CCPs from the simplified risk management framework under Art.. 16 of DORA[14], regardless of their size and risk profile, is overly burdensome and **contrary to the principle of proportionality**. This is an issue we believe should be addressed.
    - Although the principle of proportionality is enshrined in DORA, the assessment of what is proportionate, and what modifications or simplifications to the DORA requirements would still be considered proportionate by NCAs, rests entirely with the financial institutions and therefore carries an inherent compliance risk.
- **<u>Inconsistent Margin Transparency/Procyclicality requirements</u>**
    - As stated in our response[15] to the 2022 ESMA consultation, the EU in probably the only jurisdiction with APC in place and ESMA had the intention of further detailing them.
    - With EMIR 3[16], EU CCPs have to implement additional requirements around margin transparency and responsiveness compared to non-EU CCPs.
    - From an EU perspective, it is hence important to ensure a **level playing field**, both between **EU and non-EU CCPs and non-centrally cleared markets** and to avoid another field where an anti-competitive gap is created between non-EU CCPs and EU-CCPs.
    - Further, a clear definition of procyclicality and quantitative metrics for its measurement is needed to close the gap between EU and global standards when it comes to a closed set of anti-procyclicality (APC) tools to be mandatorily applied in margin models.
    - Regarding APC, Art. 28 of RTS 153/2013[17] should be amended by ESMA to introduce an **outcomes-based approach**, based on a **clear definition of procyclicality** and quantitative metrics for its measurement, whilst descoping the current APC tools a) to c).
    - Regarding the expected RTS on **margin transparency**, we see the current requirements

[14] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2554
[15] https://eachccp.eu/wp-content/uploads/2022/05/EACH-response-to-ESMA-Consultation-on-Review-of-RTS-No-1532013-with-respect-to-procyclicality-of-margin-March-2022.pdf
[16] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202402987
[17] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0153

as broadly adequate, hence, we urge for a **balanced proportional approach** that does not introduce new burdens or complexity.

- **Inconsistent preferential capital treatment of cleared transactions for insurers**
  - The Solvency II Regulation[18] for insurers and pension funds has some recognition that centrally cleared transactions should be afforded preferential capital treatment. However, the recognition is limited to only those derivative transactions that are cleared through traditional client clearing models. We consider that regulators did not envisage the situation of insurers becoming direct members of a CCP through direct access models. Therefore, CCPs' direct access clearing models, which cover derivatives and repo transactions and require the client to face the CCP directly, are not in scope of this recognition. Solvency II therefore only reflects insurance firms' exposure to clearing members and should explicitly include a beneficial risk weight for transactions cleared directly with a CCP similar to the Capital Requirements Regulation.
  - In sum, Solvency II includes an incentive to use clearing through clearing members as opposed to direct access models, which undermines the policy objective of reducing concentration risk and dependence on a few CCSP.
  - The Solvency II Delegated Regulation[19] should therefore be amended to **extend preferential capital treatment** for insurers and pension funds' cleared transactions for both **derivatives and repo** under **traditional client clearing and direct access clearing** models.
- **Regulatory hurdles for Fund Manager and Insurers' Access to Clearing**
  - While EMIR 3 has led to first changes to EU fund regulations like MMFR[20] and UCITS Directive[21], this sectoral legislation still disincentivises central clearing with respect to counterparty limits for funds for centrally cleared repos. In addition, the MMFR does not allow funds to re-use or raise margins on CCP repo markets, keeping cost of clearing higher than necessary for market participants (notably for the buy-side), and keeping them trapped in bilateral markets.
  - In the spirit of EMIR 3, the **strict collateral concentration and diversification rules** applied to UCITS should therefore be **further adapted risk-adequately** for CCP cleared reverse repos, and funds should not be restricted from re-using or raising margins on cleared repo markets.
- **Access to central banks facilities**
  - EACH acknowledges that the ECB has recently proposed introducing changes to the dedicated Eurosystem overnight credit facility, which serves as a crisis-related liquidity backstop for eligible euro area CCPs under the TARGET Guideline. While the details of these are still pending, they seem to imply the activation – under certain conditions – of the Eurosystem CCP credit facility that will no longer require a decision by the ECB

[18] https://eur-lex.europa.eu/eli/dir/2009/138/oj/eng
[19] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0035
[20] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1131
[21] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0065

Governing Council to ensure prompt operationalisation, meaning that the CCP credit facility would be, in cases of severe financial stress, immediately available to eligible euro area CCPs if needed.

- EACH Members **appreciate this initiative undertaken by the ECB**, and recognise the independent nature of central banks when it comes to monetary policy and the management of the financial system. We would nevertheless call for some further changes in order to reach a more even level playing field among CCPs regarding the access to central bank facilities. In particular, we believe that:
  - CCPs should generally be able to **access central bank facilities** – notably without having to obtain a **banking license**;
  - CCP access to central bank liquidity should be possible **also during normal circumstances**;
  - The various practices regulating access to central bank deposits and remuneration of CCP assets should be **harmonised**.
- A more standardized regime for CCP access to central banks would be a good mechanism to promote financial stability because:
  - Such regime would assist CCPs in **limiting their exposure to commercial banks** and risk associated with potential insolvency or technical outages of market infrastructures the CCP uses for the purpose of investment and/or generating liquidity;
  - Access to central bank facilities would allow CCPs which collect margins intra-day in multiple currencies to operate in a **time window** highly aligned with the markets operating hours reducing operational complexities;
  - **Settlement risks**, in particular those related to the inability of CCPs becoming settlement agents in most of the relevant securities settlement systems, would be limited.

Q8. Does the EU trade, post-trade, asset management or funds framework apply disproportionate burdens or restrictions on the use of new technologies and innovation in these sectors? Please choose from 1 (strongly agree) to 5 (strongly disagree) or 'no opinion'. Please explain and provide examples.

1	2	3	4	5	No opinion
	x				

As mentioned in our response to Q1, we are of the opinion that the content of the ESMA Draft RTS on EMIR 3 Art. 15 & 17 (authorisation of new CCP products and services) and the ESMA Draft RTS on Art. 49 & 49a (authorisation of changes to risk models) **unnecessarily jeopardise the parallel objective of making the EU more competitive**.

The requirements for having a product approved would become far more onerous in the EU as opposed to other jurisdictions with similarly mature markets such as the UK, US and Switzerland. Therefore, we respectfully believe that a more reasonable approach is needed that increases the rigour to assess extensions of authorization compared to the status quo but yet avoids the exacerbation of efforts required by the ESMA, NCAs and CCPs.

In addition, when it comes to the approval of changes to risk models, the threshold included in the Draft RTS is too low and would therefore capture non-material changes and deem them "significant" even when they have no real impact on a CCP's risk profile. This would therefore lead to a higher number of full authorisation requests unnecessarily needing to be analysed by authorities and to the creation of additional burden for CCPs, given the resources that would need to be deployed to comply with the Art. 49 requirements (i.e. independent model validations, full suite of documentation, EMIR Risk Committee involvement, etc.). All of that without delivering a clear benefit to risk management or overall CCP's resilience.

3. Post-trading

3.1. Barriers to cross-border settlement and other CSD services

3.1.3. Settlement services in the EU

Q23. How could settlement in T2S be further enhanced in order to build a deeper and more integrated market in the EU and facilitate cross-CSD settlement?

To promote T2S as a strong and efficient post-trading backbone for European capital markets, we propose to create incentives for the missing Member States and market participants to migrate flows to T2S, thereby increasing the efficiency of European post-trade markets and de-risking European capital markets by using central bank money. This could be achieved by:

- The ECB introducing **volume-based pricing on T2S** as a market mechanism to incentivize the use of T2S by all market participants, including settlement dark pools to further reduce fragmentation, and as such encourage all market participants with scale capacities to invest in innovation.
- The ECB should allow **efficient cross-border settlement**, **reduce technical limitations**, and implement **open change requests** promptly. Currently, only 4% of settlements in T2S are cross-border. Key is also to ensure the ECB will simplify the settlement of non-T2S issued securities - planned for mid-2026.
- The European **Member States that are not yet participating in T2S** (8 out 27 Member States) should rethink their decision and join T2S in order to foster the efficiency of European capital markets.
- The European Commission should further **harmonize underlying regimes to push for cross-border settlements in T2S**. Regulators should introduce measures to reduce incentives for internalizing settlement and dark pool flows, as internalized flows have a much lower settlement efficiency than those via T2S.
- The European Commission should **change the unbalanced treatment of penalty rules under CSDR**[22]. Additional thresholds should be implemented for internalized transactions so as not to avoid costs under the penalty regime outside of T2S. In addition, T2S-CSDs should not be allowed to impose surcharges on cross-border settlements ensuring a European-wide level playing field.
- The ECB should **further improve liquidity management** via the expansion of auto-collateralization in T2S and optimize cash settlement in central bank money. Furthermore, existing Corporate Action Standards and SCoRE Standards should be fully adopted by market participants to streamline European settlement infrastructure.

[22] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0909

By adopting these recommendations, the pan-European T2S platform can be significantly improved as a collaborative infrastructure settlement platform, contributing to further efficiency in Europe by fully utilizing the benefits of Clearstream Europe being the one entry gate. Bringing T2S to full performance as one European settlement platform will also encourage market-driven innovation in a collaborative approach.

Q25. Are there any national market practices, laws, rules/regulations, or operational requirements which hinder the participation in T2S or cross-CSD settlement? Please provide details.

Yes. In our view, **stronger EU-level coordination is needed** to override conflicting national rules. Some of the key obstacles stemming from conflicting national rules may include, among others: i) divergent corporate actions processing, as some markets still use manual processes, ii) tax and legal conflict, such as withholding tax and insolvency law; iii) some jurisdictions may impose additional requirements beyond T2S standards.

3.1.5 Barriers and other aspects under the SFD

Questions (for the purpose of the questions below, please note that the term barrier also includes difficulties or challenges)	Answers	
	Yes	No
Q54. Do the definitions, in particular the definition of a "system" and "transfer orders", result in barriers related to the change in market practice in the set-up of systems as well as the use of DLT?	x	
Q61. Is there legal certainty on the scope of the settlement finality protection under SFD?		x
Q63. The SFD does not apply to third-country systems, however, Member States can extend the protections in the SFD to domestic institutions participating directly in third-country systems and to any relevant collateral security ('extension for third-country systems'). Is the lack of transparency related to Member States extending for third-country systems creating barriers to the provision of services in the single market or creating a non-level playing field for EU entities?	x	

Answer to Q54:

Some tokenised financial instruments are not necessarily deposited with a CSD (as operator of a securities settlement system) or a financial institution but **may instead be held in alternative arrangements**. A concrete example are crypto securities (Kryptowertpapiere) issued under the German Electronic Securities Act (Gesetz über elektronische Wertpapiere – "eWpG") which may be held in a socalled crypto securities register (Kryptowertpapierregister). While the administration of a crypto securities register is a licensable activity under the German Banking Act, the operator of the crypto securities register may not be a securities settlement system or a financial institution within the meaning of Art. 2(17) EMIR. This is particularly due to the fact that the EMIR definition of "financial institution" refers to CRD banking services which do not encompass services solely regulated under domestic law, such as the operation of a crypto securities register pursuant to the eWpG.

From a risk management perspective, **a CCP should be able to accept financial instruments that meet the conditions specified in Annex I Section 1 of RTS 153/2013**[23] as collateral independent of the underlying technology. However, the requirement from Art. 47(3) cited above currently undermines the ability of CCPs to accept DLT-based financial instruments.

Clarification is therefore required that tokenised financial instruments / DLT-securities held in such alternative arrangements (governed under national law) likewise satisfy the requirement of Art. 47 (3) EMIR.

Answer to Q61:

As a first comment, we would like to emphasize that since every CCP is required to have a "system" status from SFD[24], **our position in all our answers regarding SFD and FCD also covers other "systems" created for example by clearing houses (non-CCPs)**, ***where applicable***.

EACH is of the opinion that the SFD could be enhanced to **address specific issues relating to CCPs**, in particular ensuring that **SFD protection**:

- Grants that **all CCPs** could receive **protection under the SFD for their default management rules and procedures if authorised or recognised by the EU**;
- **Is applicable to all participants** (including **CCPs are their own system**, **clearing members**, **clients** and **indirect clients/participants** whether or not known to the system);
- **Is explicitly extended for both business as usual (BAU) and default management activities of the CCP** as included in its default rules, and to any actions carried out by a CCP in relation to their default rules. The European Commission should be aware that, for CCPs, the protections of SFD may apply only to a relatively narrow part of their business – dealing with transfer orders and security collateral – since the SFD does not expressly include any provisions relating to the entry into of non-securities contracts (e.g. derivatives), the management of open derivatives contracts or their risk management, the taking or netting of collateral received by way of title transfer (where the SFD could be interpreted as ambiguous and different Member State interpretations exist) nor all aspects of the default management of CCPs under Art. 48 EMIR. Since EMIR contains only sparse provisions concerning insolvency protections, which do not apply to third country systems, the protections of the SFD must be extended such that they are

[23] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0153
[24] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0026

not **limited to entering transfer orders/taking collateral security**, but should be extended also to **include all default management activities to be closer aligned with Art. 48 EMIR**. This shall encompass (but not be limited to) hedging on the clearing member's account, rolling contracts, porting, auctions and realizing or transferring collateral and contracts, and also to third-country as well as EU CCPs. Furthermore, protection should be extended to activities in relation to any assets, not just cash and securities. At present, protection is only granted for transfer orders entered on the day of insolvency, if "carried out" on that day, not after. If a transfer order is processed on the next day, it may therefore not be protected. This constitutes a problem for default management (if not otherwise protected) and also for settlement cycles longer than T+0 (and issues similar to this were considered as part of the Swedbank case).
In the event of insolvency of a clearing member of the CCP, CCPs may issue new settlement instructions that need to be processed by the CCP or by a settlement or payment system (for instance, cancellation of previously issued settlement instructions or new settlement instructions required within the close-out netting procedure in the CCP). The possibility to accept and process new transfer orders after the commencement of an insolvency proceeding (not necessarily on the same business day) against a participant of a system, in the context of CCP default management procedures, could be protected by the SFD. It appears that in some EU Member States transfer orders from the CCP to the Securities Settlement System (SSS) cannot be cancelled or reinstructed if needed (e.g. in case the CCP starts a buy-in procedure). This could be addressed if there was a change to the SFD at EU level that harmonises the protection of CCP default management procedures (Art. 48 EMIR) and, consequently, the transfer orders that the CCP might issue or process within those default management measures.
To address the issue above, EACH suggests that Art. 3 SFD be extended so that there is a paragraph which contains roughly the following content:

> *transfer orders which are issued or entered into a system by a central counterparty after the moment of the opening of insolvency proceedings of a participant in the system operated by such central counterparty, and that are carried out by the central counterparty in accordance with Art. 48 (EMIR), shall be legally enforceable and binding on third parties.*

- **Is not limited to cash and/or financial instruments** (within the meaning of MiFID) meaning that financial collateral arrangement involving commodities (FCD) and transfers of commodities (SFD) cannot benefit from the protections given under these Directives. Note that this refers to the commodities themselves (including warrants, emission allowance, warehouse receipts, etc.) and not commodity derivatives (which in most cases should be MiFID financial instruments). Commodities and transfers of commodities should also be protected under the scope of SFD and FCD.
- **Is clarified to incorporate any challenging of the provision of collateral itself** - As outlined in the foregoing, Art. 9 SFD which states that "*the rights of a system operator or of a participant to collateral security provided to them in connection with a system [...] shall not be affected by insolvency proceedings*" is to be interpreted so that it protects such provision of collateral also against any challenging of the provision of collateral itself (for example, based on *actio pauliana*

rules) (see Ruzik, in: Schulze/Lehmann, European Financial Services Law, Art. 3 SFD, para. 7). Moreover, this provision should be interpreted in such a way that it protects the provision of collateral also in the case of initiation of administration or liquidation proceedings that are not insolvency proceedings per se, but could have a legal effect in relation to the collateral or contributions to the clearing fund. Such protection should be provided for even if open liquidation or other legal measures have been initiated before the default of any clearing member. To further strengthen the legal certainty, it would be recommendable if that effect is directly set out in the wording of Art. 9 SFD. We propose that the scope of the protections of Art. 9 SFD be clarified so that it expressly includes also realisable assets provided on a title transfer basis.

Answer to Q63:

EACH is of the opinion that **all CCPs** could receive **protection under the SFD for their default management rules and procedures if authorised or recognised by the EU**. However, this should be achieved by **extending to third-country systems the protections of the SFD**, not merely by protecting EU participants in those systems. We would like to underline in this regard that **all aspects** of the default management process, in particular those involving the property of the defaulting clearing member pre- or post- insolvency, including the default actions (including porting, close- out netting, collateral enforcement, hedging or otherwise dealing with contracts) and the application of the CCP's default waterfall, **should be included in any SFD protections**. It is also crucial to point out that **close-out netting** and **collateral enforceability** form an essential part of the default management procedure of a CCP as required under EMIR (or equivalent laws), and it is essential that they are **included within any protections under the SFD** for the default management process of the CCP.

At the moment there are differences between Member States concerning whether the applicable third-country law provisions are comparable to the SFD. EACH suggests **considering reviewing** what could be **most efficient and robust approach**: a determination at EU level or at Member State level, having regard to the existing regimes across Member States for the designation of systems. **In case an EU-level determination is adopted**, EACH believes it could be done as **part of the EMIR recognition process.**

Furthermore, as previously mentioned, for what concerns **transfer orders and other aspects of the SFD**, if the EU decides to adopt an equivalence regime at EU level, it should factor in that:

i. the third country system includes clear rules specifying the kinds of transfer orders which arise in their systems and their timing;
ii. those rules are enforceable under the system's governing law; and
iii. third-country law applicable to the system does not discriminate between EU participants and third-country participants (subject to those differences which arise due to different definitions or solutions for similar concepts under applicable laws, such as different account segregation models in the US and EU). In addition, we believe that the scope should be extended to both

third-country payment and security settlement systems, as there is no reason to differentiate between the two.

3.2 Barriers to the application of new technology and new market practices

3.2.2 Detailed questions on the applicability of the CSDR and SFD to DLT-based CSDs

Q74. Does the definition of cash need to be refined to take into account technological developments affecting the provision of cash, in particular the emergence of tokenized central bank money, tokenized commercial bank money and electronic money tokens?

Yes. Considering the ongoing efforts by the ECB to create Wholesale Central Bank Digital Currency (wCBDC), it would be beneficial to amend RTS 153/2013 EMIR[25] to specifically clarify that **wCBDC shall be classified as cash**. This would give CCPs regulatory certainty that wCBDC may be accepted as collateral just as CCPs would accept regular central bank deposits.

3.3 Barriers and other aspects under the FCD

Questions (for the purpose of the questions below, please note that the term barrier also includes difficulties or challenges)	**Answers**	
	Yes	No
Q89. Do the definitions and concepts in the FCD, including the notion of 'possession and control', 'accounts' and 'book-entry' result in barriers or legal uncertainty, e.g. due to the change in market practices, the use of DLT?	x	
Q91. Do you think that collateral other than cash, financial instruments and credit claims should be made eligible under the FCD, in particular in light of DLT based financial collateral arrangements? If yes, please list what other forms of collateral should be considered as eligible and explain why.	x	
Q97. Are there any other barriers created by the FCD which are not mentioned above?	x	

Q86. In the last FCD consultation, the addition re-insurers, alternative investment funds (AIF), institutions for occupational retirement provision (IORPs), crypto-asset service providers, all non-natural persons, non-financial market participants which regularly enter into physically or financially settled forward contracts for commodities or EU allowances (EUAs) was suggested by

[25] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0153

stakeholders. It was also asked if payment institutions, e-money institutions and CSDs should be added to the scope. Please provide any views you may have of one or several of the suggested potential additional participants.

A final issue concerning the FCD[26] that EACH would like to raise concerns the **participants**. Member States have taken different approaches to defining the entity scope of the FCD as it applies in their jurisdictions, and as CCPs commonly enter into cross-border transactions, this means that they need to analyse the scope of the FCD as implemented in their clearing member's jurisdiction to determine whether they can get the benefit of the FCD's protections. In this context, EACH is of the opinion that a **more consistent and homogeneous approach would be welcome**.

Answer to Q89:

For what concerns the **concepts of "possession" and "control"**, the lack of certainty as to how these apply to numerous commonly used collateral systems, e.g. where the collateral provider is able to withdraw collateral or where collateral remains in an account of the collateral provider. In the U.S., only post-default possession control is assessed, not the ongoing situation of possession or control and whether the level of possession or control suffices, as in the EU. As a result, security financial collateral is essentially close to unused in Europe. The unclear definition of possession and control needs addressing as a high priority and perhaps could be addressed via detail in technical standards. Such terms are not defined further in the FCD and, in most EU jurisdictions, are not legal concepts that could be readily used in relation to assets such as financial collateral. Further clarification could potentially be welcome, to the extent that it helps to provide more detail and **harmonise the meaning of "possession" and "control" across Member States** and so remove some of the uncertainty faced by market participants.

We also would like to add that, in relation to **awareness of pre-insolvency proceedings**, the close relationship between the NCAs and collateral takers which are the CCPs should be emphasised, and therefore suggest that awareness could be achieved by having the relevant NCA providing written notice to the CCP. Furthermore, EACH would like to point out that clarification concerning how a collateral taker can 'prove that he should not have been aware' would be needed. This test contains a hypothetical element that could potentially lead to different interpretations by the Courts due to the differences inherent to the various national laws, therefore jeopardizing the purpose of the FCD to provide for legal certainty on the enforceability of financial collateral in all EU Member States.

Answer to Q91:

FCD (and SFD) base the protections they offer with reference to cash and/or financial instruments (within the meaning of MiFID), therefore excluding financial collateral arrangement involving

[26] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0047

commodities (in FCD) and transfers of commodities (in SFD) from the benefits of the protections given under these Directives. Note that this refers to the commodities themselves (including warrants, warehouse receipts etc.) and not commodity derivatives (which in most cases should be MiFID financial instruments).
EACH is therefore of the opinion that the **list of collateral eligible under the FCD should be broadened and cover all assets** (e.g. also bank guarantees, emission allowances, commodities and commodities instruments) that are accepted by CCPs as collateral in accordance with EMIR. EACH is also in favour of **including emission allowances and other commodities** in general in the definition of financial instruments in the FCD. CCPs are aware that this may have implications under EMIR for what concerns the eligibility of such collateral, and encourage conversations with the NCAs on what could be the best way to reach such aim.

In addition, for what concerns the point on **crypto-assets qualifying as financial instrument**, EACH believes that the **FCD may not be the right place** to set out specifications regarding ownership and provision requirements, as these aspects are governed by the national private law. Regarding the possibility of further specifying possession and control requirements, however, we consider it useful to clarify how these requirements are to be applied to crypto-assets.

Answer to Q97:

EACH is of the opinion that **CCPs should receive protection for close-out netting even in the scenario of a clearing member resolution** (i.e. where the clearing member declared to be in resolution has defaulted in the CCP), noting that resolution alone is not ground for default. That protection is already foreseen in Directive 2014/59/EU[27] (BRRD Art. 70.2 and 71.3) and Regulation 2021/23/EU[28] (CCP Recovery and Resolution Art. 55 to 57) which exclude from the power of the resolution authorities to temporarily suspend certain rights (including termination rights) those rights related to the systems or operators of systems designated for the purposes of the SFD, other CCPs and central banks. However, the carve-outs to BRRD do not go far enough, when many CCPs have long-dated derivatives settling many years into the future, given that only obligations of 7 days or fewer maturity are covered. A greater protection for CCPs would enhance financial stability. A CCP’s default rules and default management procedures under EMIR should be legally enforceable in all circumstances. For clarity purposes, this exemption from resolution authorities’ powers could also be expressly mentioned in Article 1, paragraph 6 of the FCD, stating that its provisions do not apply to the payment and delivery obligations owed to systems or operators of systems designated for the purposes of the SFD, CCPs, and central banks.

In addition, an **explicit provision stating that national avoidance provisions are not applicable to close-out netting provisions** (including any single amounts that become part of the close-out netting)

[27] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0059
[28] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0023

would strengthen the legal certainty regarding the enforceability of close-out netting provisions.

3.6. Other issues on post-trading

Q114. Other matters that could potentially contribute to removing barriers to the consolidation of post- trading infrastructure, to improving the EU's capital markets attractiveness while reducing fragmentation and to improving integration in post-trade services might also be important. Please provide any further suggestions to improve the integration, competitiveness, and efficiency of post- trade services (including clearing and settlement) in the EU. Please provide supporting evidence for any suggestions.

EACH Members would like to put forward the following comments:

- **Reduction of regulatory hurdles for fund managers** – As already mentioned in our response to Q7 (Section 1), **more changes to UCITS Directive[29] and MMFR[30] are required** for better access to clearing by the buy-side following the first improvements via EMIR 3[31]. Not only CCP cleared derivatives, but also cleared SFTs, should be exempted consistently in funds regulation from counterparty limits. Further, funds are restricted in raising or re-using cash or other collateral received in (reverse-)repo transactions for meeting their margin requirements at CCPs. Hence, funds need to ensure funding for margin requirements from elsewhere, increasing the costs for central clearing. Targeted changes to the UCITS Directive and MMFR would resolve this and make the voluntary use of clearing solutions economically more attractive for the buy-side.
- **Reduction of regulatory hurdles for insurers** – As detailed in our response to Q7 (Section 1) regulators did not envisage the situation of insurers becoming direct members of a CCP through new clearing access models. Hence, Solvency II[32] only reflects insurance firms' exposure to clearing members in a traditional clearing relationship (i.e., indirect exposure). Where insurers use CCPs the new access models and build direct CCP exposure, they currently receive a punitive treatment in their capital requirements. Banks do not face the same constraints in the CCR. The recent EIOPA technical advice[33] on Solvency II Level 2 is therefore a welcome step in the right direction to ensure equal i.e., favourable capital treatment of banks and insurers for direct CCP exposure. However, this recommendation only applies to centrally cleared derivatives and misses to ensure the same favourable treatment for SFTs. An **extension to SFTs** would therefore be recommendable.
- **Reduction of regulatory hurdles for clearing members** – Banks should be able to benefit from a **preferential treatment of centrally cleared SFTs** when calculating their NSFR. Currently, the

[29] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0065
[30] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1131
[31] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202402987
[32] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0138
[33] https://www.eiopa.europa.eu/document/download/4c7df2c4-a765-476e-9654-5befbea624ef_en?filename=EIOPA-BoS-24-588%20-%20Advice%20on%20direct%20exposures%20to%20qualifying%20CCPs.pdf

NSFR does not recognize that CCPs become the counterparty for the seller and buyer in each transaction. Thus, banks need to apply a less favourable funding factor for using centrally cleared transactions when they calculate their NSFR, making the **use of clearing solutions unattractive** and keeping the costs of clearing artificially high.

- **Regulation should not hinder innovation and efficiency** – Cross-product margining as offered by European CCPs does not see an uptake despite the associated efficiency gains in reduced margins and funding costs. Reason: Basel III SACCR[34] does not allow off setting between products like SFTs and derivatives when banks/clearing members calculate their capital requirements. As a result, is it economically not attractive for CMs to offer cross product netting of margins to their clients. **Adaptions of the international methodology** in the long term and of the European implementation in the short term would resolve the issue and make clearing in such products such as SFTs more attractive for end clients.
- **Aligning risk standards between bilateral and centrally cleared markets** – In the non-centrally cleared space, the EU currently does not have equivalent haircut requirements like those for CCPs. Unlevel playing field and increased costs for centrally cleared markets in comparison are the result. The FSB document "Transforming Shadow Banking into Resilient Market-based Finance"[35] from 2015, updated in 2020, recommends having bilateral SFT haircuts as a risk mitigation tool. Also, the ESRB noticed[36] that the bulk of bilateral SFT transactions apply 0 haircut and recommends looking into haircuts in 2024. It is questionable if not applying haircuts is a risk adequate approach, notably in the light of recent attention by regulators to address NBFI resilience and leverage. Although the EU should continue to carefully review its approach (given the EBA mandate to assess bilateral SFT haircut appropriateness) before making any changes, global consistency should be fostered with a view to ensure that haircuts are generally risk-adequate across the board. This does not automatically mean the introduction of mandatory haircuts, but measures such as supervisory enforcement of more risk sensitive haircuts as done by the BoE so far could also help.
- **Incentivising more voluntary clearing by the public sector** – EACH supports the incentivisation of more clearing by public entities. In this regard, Art. 40 of EMIR 3 mandates ESMA to issue guidelines specifying the method to be used by CCPs for the calculation of exposures and of the contributions, if any, to the financial resources of CCPs by public sector entities participating in such CCPs.

[34] https://www.bis.org/publ/bcbs279.pdf

[35] https://www.fsb.org/uploads/SFT_haircuts_framework.pdf

[36] https://www.esrb.europa.eu/pub/pdf/reports/esrb.response_ecconsultation202412~4a44bca53f.en.pdf?a3336ab4366e38395ca744f2d85cc079

4. Horizontal barriers to trading and post-trading infrastructures

4.1. EPTF barriers

Q1. How do you assess the continuing importance of the barriers identified by the EPTF report and those put on EPTF watchlist in 2017?
Please rank each barrier according to the urgency of its resolution for achieving an integrated EU market for post-trade services. Please rank barriers as high/medium/low urgency (max 6 barriers per grading category). Please mark barriers that have been resolved and are no longer relevant.

Barrier	High	Medium	Low	No longer relevant	Do you agree with EPTF recommendations? YES/NO
Uncertainty as to the legal soundness of risk mitigation techniques used by intermediaries and of CCPs' default management procedures (EPTF 8) (formerly Giovannini Barrier 14)	x				
Shortcomings of EU rules on finality (EPTF 10)	x				

4.2. Leveraging cross-border operational synergies between entities (outsourcing, treatment of group structures)

Q2. On a scale from 1 (it is inadequate) to 5 (it is adequate), do you believe that the current regulatory and supervisory set-up as regards outsourcing is adequate, and captures the risks linked to outsourcing appropriately?

1	2	3	4	5	No opinion
		x			

Concerning the regulatory and supervisory set-up regarding outsourcing, EACH Members would like to refer to our comments[37] to the ESMA Guidelines on outsourcing to Cloud Service Providers (CSPs)[38]:

- **Clear guidance based on existing rules** – For companies, a clear guidance based on existing rules would be beneficial.

[37] https://eachccp.eu/wp-content/uploads/2025/04/EACH-response-ESMA-consultation-on-Outsourcing-to-Cloud-Service-Providers.pdf
[38] https://www.esma.europa.eu/sites/default/files/library/esma_cloud_guidelines.pdf

- **Integration of ESMA guidelines in existing Technology Strategy, Vendor Management, Procurement and Information Security processes** – Companies often see outsourcing to CSPs as part of their Technology Strategy and is best placed within this strategy to ensure a holistic approach towards the use and oversight of technology. A standalone cloud strategy or policy will not be necessarily beneficial towards the better governance and oversight of the use of CSPs. Companies currently have an outsourcing and an ICT third-party risk policy in place that covers oversight, monitoring, pre-engagement due diligence and risk analysis of any outsourcing or use of an ICT provider; these policies and processes also cover outsourcing to and ICT provisions by CSPs. The outsourcing and ICT third-party risk policies aligns with existing group processes for Vendor Management, Procurement and Information Security. Therefore, outsourcing to and ICT provisions by CSPs does not necessarily require its own strategy.
  In this context, EACH would advocate for **CSPs to be allowed to be integrated into the firms' existing Technology Strategy, Vendor Management, Procurement and Information Security processes** to avoid the creation of a new and redundant cloud standalone structure.
- Additionally, EACH believes that ESMA should explicitly recognize the **qualitative differences** between a firm outsourcing tasks to an unaffiliated third party and tasks being performed in connection with shared services among affiliates. When tasks are performed as shared service, there is an alignment of the interest from the firm's side in meeting its responsibilities and those performing tasks because the ultimate shareholders are the same.

4.4 Innovation – DLT Pilot Regime (DLTPR) and asset tokenisation

Question 31. Do you believe that DLT is a useful technology to support trading services in financial instruments?

EACH Members would like to put forward the following comments regarding the use of DLT in the clearing sector.

1. **DLT can simplify certain aspects but other services will still need to be delivered**
   - **Automation & Efficiency** – DLT can automate certain post-trade processes (e.g., trade reconciliation, settlement) by providing a single, immutable record.
   - **Real-time Settlement vs. Liquidity Needs** – While DLT enables near-instant settlement, this may create liquidity challenges, as financial institutions currently benefit from netted settlement obligations.
   - **Regulatory & Compliance Services Still Needed** – Supervision, dispute resolution, and risk management cannot be fully automated through DLT, and trusted third parties may still be required to ensure regulatory compliance and address legal disputes.
   - **EBA Clearing Parallel** – The TARGET Instant Payment Settlement (TIPS) system already facilitates real-time payments, but still requires oversight and governance structures. EBA Clearing retains operational oversight despite increasing automation.

2. **DLT removing CCPs would mean the loss of CCP's guarantee function (i.e., resilience) and anonymity**
    - **Loss of Default Risk Protection** – CCPs provide a crucial risk-management function by mutualising default risk. Also, without a CCP, participants bear counterparty credit risk directly, increasing systemic risk.
    - **Impact on Market Resilience** – CCPs act as a central shock absorber during financial stress by ensuring orderly settlement. DLT does not inherently provide a mechanism to absorb defaults or manage financial crises.
    - **Anonymity Concerns** – In a CCP-cleared environment, counterparties often do not know who they are trading with, reducing concerns about counterparty creditworthiness.
    - **Direct risk assessment** – A fully decentralised DLT model would require counterparties to assess each other's risk directly, a more burdensome and less efficient task.
    - **EBA Clearing Parallel:**
        - EBA Clearing systems (e.g., EURO1, STEP2) rely on existing financial institutions to provide guarantees and credit lines.
        - If DLT were introduced, these functions would still be necessary to maintain resilience.

3. **Loss of netting benefits is secondary compared to the above**
    - **Netting Reduces Transaction Volume & Liquidity Needs**
        - CCPs significantly reduce gross settlement obligations through multilateral netting, improving capital efficiency.
        - DLT's real-time gross settlement model would require higher liquidity reserves, making the system less capital-efficient.
    - **EBA Clearing Parallel:**
        - EURO1 provides netting benefits for cross-border payments, ensuring efficiency.
        - A full transition to a real-time DLT system would remove these efficiencies and increase liquidity burdens on banks.

4. **DLT may prove useful in regard to collateral management by enabling near-time collateral transfers**
    - Near-time transfers would allow CCPs to manage liquidity even more efficiently, ensuring that collateral is available precisely and only where and when it is needed.
    - In addition, DLT has the potential to streamline cross-border collateral transfers across different jurisdictions in a cost-efficient way.
    - To enable CCPs to accept DLT collateral, regulatory changes and clarifications are needed. These should focus on:
        - clarifying by amendment of Art. 38 of RTS 153/2013[39] that wCBDC should be treated as cash;

[39] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0153

  - defining conditions in RTS 153/2013 under which MiCA[40] instruments may be accepted as collateral. This requires an amendment of Art. 39 plus the addition of conditions applicable to MiCA instruments in Annex 1.
- CCPs should already be able to accept tokenized financial instruments, as the definition of financial instruments in MiFID[41] is technology-agnostic. However, it would be beneficial to include a definition of financial instruments referring to the MiFID definition in Art. 2 EMIR.

Q34. How should the regulatory perimeter between a technological service provider and a financial service provider, especially a CSD, be drawn in the above described DLT context?

In our view, the **regulatory perimeter between** a technological service provider (**TSP**) and a **financial service provider**, particularly a CSD, should be **clearly delineated** based on the nature of responsibilities, regulatory obligations, and the role each plays in ensuring market integrity.

While a **TSP** may offer critical infrastructure or technological capabilities (e.g. DLT platforms, smart contract execution, or data services), it does **not assume the same level of regulatory accountability or systemic responsibility as a CSD**. A CSD is not merely a service provider, it is a systemically important financial market infrastructure that is entrusted with safeguarding the integrity and stability of the financial system.

The key differentiator lies in the CSD's role as a guarantor of fulfilment and continuity. CSDs are subject to stringent regulatory oversight precisely because they are responsible for ensuring the finality of settlement, the safekeeping of securities, and the orderly functioning of post-trade processes. This includes managing counterparty and operational risks, ensuring compliance with investor protection standards, and maintaining robust governance and risk management frameworks.

In contrast, TSPs, while essential enablers of innovation, do not bear the same level of trust or systemic responsibilities. Their services, though critical, are modular and substitutable, and they typically do not carry obligations related to the legal finality of transactions or the continuity of market operations in times of stress.

Therefore, the regulatory perimeter should be drawn based on:

1. **Systemic responsibility** – CSDs are integral to financial stability and must meet higher regulatory standards;
2. **Legal accountability** – CSDs guarantee the fulfilment of transactions and the safekeeping of assets, unlike TSPs;
3. **Risk exposure** – CSDs manage and mitigate financial and operational risks that TSPs are not exposed to in the same way;

[40] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1114
[41] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065

4. **Market integrity** – CSDs uphold the trust and transparency of financial markets, which requires a distinct regulatory framework.

This distinction is particularly important in the DLT context, where the lines between technology and financial services may blur. The core responsibilities of a CSD, ensuring trust, continuity, and legal certainty, remain indispensable and must be preserved through a clear and robust regulatory perimeter, which in itself must also be open enough for CSDs to make use of new technologies like DLT.

Q35. The Commission recently published a study on the use of permissionless blockchains for enhancing financial services, which set out operational robustness criteria for assessing permissionless blockchains. Do you believe that beyond the Digital Operational Resilience Act (DORA), additional legislative or non-legislative action is needed to ensure appropriate mitigation of risk stemming from decentralised IT systems such as permissionless blockchains?

No. Central clearing is robustly regulated in the EU, and the regulatory frameworks doing so (e.g. EMIR, MiFID/MiFIR, SFD and FCD) focus on the nature of the financial activity, the product, and the systemic importance of the infrastructure or participant involved. There may be scenarios where the use of technology is governed by current regulation indirectly, such as DLT to clear derivatives needing an EMIR license, but importantly, these regulations do not focus on the technology used to provide it. This gives EU CCPs the ability to upgrade the technology used whilst meeting the requirements of the law. EACH believes future regulation should be technology agnostic, to allow new technology to flourish whilst meeting the goals and requirements of the relevant EU regulation.

6. Supervision

6.1. Effectiveness of the current framework

Q1. How effective are current EU supervisory arrangements in achieving the objectives or performing the tasks below? Please rate each objective from 1 to 5, 1 standing for "least effective” and 5 for "most effective”:

	1	2	3	4	5	No opinion
Contributing to financial stability				x		
The functioning of the internal market				x		
The integrity, transparency, efficiency and orderly functioning of financial markets				x		
The enforcement of EU rules			x			
The prevention of regulatory arbitrage and promotion of equal conditions of competition			x			
Supervisory convergence across the internal market				x		
Development of the Single Rule Book				x		
Consumer and investor protection						x
Support financial innovation in the market			x			
Market monitoring						x
Supervisory data management including data sharing						x
Responsiveness, transparency			x			
Stakeholder engagement and involvement				x		
Use of resources						x
Proportionality of the fees for direct supervision						x

6.2. Specific questions on supervisory arrangements for different sectors

Q5. Some national competent authorities (NCAs) have developed advanced expertise or specialisation in supervising certain sectors. What is your view on building on these NCAs and creating EU centres of supervisory expertise by sectors?

It is EACH’s understanding that “creating EU centres of supervisory expertise by sector” may imply building a model along the line of the “regional hubs”. EACH Members would however advise against these supervisory models for the following reasons:

- **Fragmentation** – The fragmentation of this supervisory structure would not be beneficial for increasing global competitiveness of EU CCPs. Furthermore, certain issues related to global supervision (e.g. gold-plating EU rules) would not be addressed.

- **Convergence** – We are of the opinion that such a structure may create an unlevel playing field as well as lead to possible differences in supervisory approaches between different hubs. In addition, the division of responsibilities may remain unclear.
- **Efficiency** – This model shows potential for increased supervisory costs and coordination processes, given the complex web of supervisors and the required coordination between NCA, College and ESMA.

Q6. Do you think supervision of EU financial markets would benefit from pooling together resources and expertise of individual NCAs in regional hubs?

Please see answer to Q5.

Q7. What is your view on setting up regional hubs of ESMA to ensure closer interaction with market participants? Please explain your reply highlighting benefits and downsides.

Please see answer to Q5.

6.4. Questions on the supervision of EU CCPs

6.4.1. Identifying the costs of the current supervisory framework and benefits of more integrated EU supervision

Q18. How would you rate the convergence of supervisory practices across Member States in the area of the supervision of CCPs? Please rate from 1 to 5 (1 very convergent, 5 very divergent). Please provide examples of divergent outcomes of supervisory practices for CCPs in different Member States.

2. The **EMIR 3**[42] supervisory system for CCPs came into force relatively recently in December 2024. It is therefore **still being tested at this initial stage of application** and it may be too early to objectively analyse its implications as well as determine whether a change in the supervisory architecture of CCPs is warranted. Any change in supervision should follow better regulation principles, which means to conduct an impact assessment on the new regime.

When it comes to **convergence**, at least until its implementation in December 2024, EACH Members had noticed an unlevel playing field and possible differences in supervisory approaches (including gold-plating/limited coordination) by some NCAs. This might not be a direct consequence of EMIR 3 per se, but due to NCAs making the final decisions it is possible that requirements are implemented in a more prescriptive way in some Member States compared to others, and with very different timelines between Member States. It is yet to be seen whether the changes brought by EMIR 3, such as the co-chairing of

[42] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202402987

colleges by ESMA and NCAs, are to have an impact on convergence.

Q20. To which extent do you agree with the following statements about possible benefits of more integrated EU supervision (please rate from 1 to 5)? (1 strongly agree, 5 strongly disagree)

- **a. It could reduce EU CCPs' regulatory costs; 3**
- **b. It could enhance the quality of supervision over EU CCPs; 3**
- **c. It could simplify and accelerate the procedure to apply for authorisation to provide clearing services in the EU; 2**
- **d. It could simplify and accelerate the procedure for additional authorisations (e.g. to extend the scope of services or activities offered in the EU); 2**
- **e. It could simplify and accelerate validation procedures for risk models and parameters; 2**
- **f. It could simplify and accelerate the procedures for obtaining supervisory approvals, e.g. with regard to outsourcing; 2**
- **g. It could lead to more efficient use of supervisory resources; 3**
- **h. It would decrease uncertainties that currently arise from different implementation or interpretations of EU Regulations in different Member States or by Member States; 1**
- **i. It would remove the need for market actors to deal with duplicative instructions from more than one supervisory authority; 1**
- **j. It would create a level playing field between EU CCPs; 2**
- **k. It would create a level playing field between EU CCPs on the one hand and third-country CCPs on the other hand; 1**
- **l. It would improve EU capacity to deal with the cross-border risks arising from greater amounts of clearing in the EU; 3**
- **m. It could ensure a harmonised understanding of decentralised technologies and the novel risks they may bring to the CCP to supervise; 3**
- **n. It could improve the resilience of EU CCPs; No opinion**
- **o. It would reduce the need for detailed regulations and extensive rulebooks to achieve harmonised supervision; 1**
- **p. Other (please specify in reply to the next question) No opinion**

EACH Members would like to point out that our answer to Q20, is provided **with the implication that "more integrated EU supervision" refers to better coordination and communication within the EU supervisory structure**, not necessarily to a fully centralised supervisory model.

Q21. Do you consider that centralised EU supervision could also produce negative side-effects.

As a first comment, we would like to point out that the **EMIR 3[43] supervisory system for CCPs came into force relatively recently in December 2024**. It is therefore still being tested at this initial stage of application and it **may be too early to objectively analyse its implications**. Nevertheless, as detailed in our response to Q23, there is a **majority support** within the EACH **Membership in favour**

[43] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202402987

of a more centralised supervision for CCPs in the EU to different degrees, although **certain CCPs have expressed support towards the EMIR 3 status quo**.

Concerning the scope of the question, EACH is of the opinion that certain **aspects of centralised EU supervision may be further explored** in order to avoid potential drawbacks. For instance, the issue of which entity would take on fiscal responsibility in case of a CCP default in a system of central supervision should be addressed. Along these lines, we need to take into account that the impact on supervisory costs is difficult to estimate as it may in some cases increase with regard to the regular supervisory fees charged compared to the current levels, while a new supervisory architecture may eventually reduce the long term costs in case of the new architecture leading to efficiency gains in product approvals or supervisory activities.

In addition, were ESMA to become the EU's single supervisor for CCPs, an internal reorganisation may be needed, especially to compensate for the loss of local expertise and the increase in work by ESMA. Furthermore, it would be important to ensure that the single supervisor applies a level playing field and does not prioritise certain CCPs (e.g. the significant ones) over non-significant CCPs.

6.4.2. How could more integrated EU supervision function?

Q23. Please indicate to which extent you support the following possible models of more integrated EU supervision of CCPs (from 1 to 5):

a) A single EU supervisor with all supervisory powers, responsible for the supervision of all EU CCPs	N/A
b) An EU supervisor with powers in certain key areas	N/A
c) Supervisory colleges with enhanced powers	N/A
d) Other set-up (please explain)	Please see below

EACH Members have thoroughly analysed different models of supervisory architecture for CCPs in the EU. As mentioned in our response to Q21, **EMIR 3 supervisory system for CCPs came into force relatively recently** in December 2024. It is therefore still being tested at this initial stage of application and it **may be too early to objectively analyse its implications**. There is nevertheless a **majority support** within the EACH Membership in favour of a **more centralised supervisory architecture for CCPs in the EU to different degrees, although certain CCPs would rather wait for the very recently revised structure in EMI3 3** – whose objective is to improve supervision and make EU CCPs more globally competitive – **to be implemented**

In addition to models a), b) and c) in the table above, EACH has also analysed other models and the prospect of a more centralised supervision may from our point of view take the form of **different models**, such as:

- **Centralised supervision through a single supervisor with all supervisory powers (option 'a)' above)**;
- **Centralised supervision with NCAs keeping powers in certain area**s **(option 'b)' above)**; as well as
- **Centralised supervision with an EU supervisor supervising significant CCPs while non-significant CCPs are supervised by local entities (option not included in the table above)**.

More centralised supervision is generally supported by a majority of EACH Members for a series of reasons. For instance, it would support a better shared understanding of rules, reducing the differences in how such rules are applied at local level by NCAs as well as the practice of "gold-plating" that takes the form of additional regulatory obligations and associated fees at Member State level. This approach may also lead to the phase out of those duplicative structures (e.g. when it comes to CCPs having to report to different authorities under different legislative regimes) which render supervision complex and often inefficient. More centralised supervision would, however, require certain reforms of both the ESAs and sectoral legislation, e.g., with a view to ensure increased competitiveness of EU CCPs, sufficient capacities to take on daily supervision, as well as a clear-cut between standard-setting and supervision to avoid conflicts of interest. Aspects such as the potential increase in supervisory costs as well as the issue of fiscal responsibility in case of CCP default would also need to be clarified.

As stated above, **the supervisory structure under the existing EMIR 3**, whose aim is to make CCPs more competitive, is supported by some EACH Members. As mentioned above, this new supervisory framework was adopted in December 2024, which is why some EACH Members believe it should be given time to be put in practice before applying changes to it. These Members would also like to invite the Commission to consider the benefits that a more detailed knowledge of local markets, framework and stakeholders would bring.

Finally, EACH Members would like to caution against models such as regional supervisory hubs or establishing supervisory colleges with enhanced powers. As detailed in our answer to question 5, **regional supervisory hubs** present several drawbacks:

- o **Fragmentation** – The fragmentation of this supervisory structure would not be beneficial for increasing global competitiveness of EU CCPs. Furthermore, certain issues related to global supervision (e.g. gold plating EU rules) would not be addressed.
- o **Convergence** – Such a structure may create an unlevel playing field as well as lead to possible differences in supervisory approaches between different hubs. In addition, the division of responsibilities may remain unclear.
- o **Efficiency** – This model shows potential for increased supervisory costs and coordination processes, given the complex web of supervisors and the required coordination between

NCAs, College and ESMA.

Similar drawbacks are associated to a model envisaging **supervisory colleges with enhanced powers**, with the addition of risking to further duplicate functions and responsibilities.

Q24. Would joint supervisory teams, composed of national experts and representatives of the EU supervisor, be an efficient tool to provide technical support to the supervision by the single supervisor? Please choose between: 1 (strongly agree), 2 (rather agree), 3 (neutral), 4 (rather disagree), 5 (strongly disagree), 6 (no opinion).

5. EACH **strongly disagrees** with the proposal of having joint supervisory teams as a technical support tool to the single supervisor. We are of the opinion that this could unnecessarily slow down the supervisory processes, in particular those referred to the approval of new products and services and changes to risk models, which need to be carried out in an efficient manner.

Q25. To ensure stronger EU-level supervision, which of the following authorities or bodies should be closely involved in supervision? For each point, options to choose from: 1 (strongly agree), 2 (rather agree), 3 (neutral), 4 (rather disagree), 5 (strongly disagree), 6 (no opinion)

a. **European Central Bank and the relevant central banks of issue of Member States**
b. **ESMA**
c. **Single Supervisory Mechanism and other bank supervisors for non-Banking Union Member States**
d. **Competent authorities of other Member States**
e. **Supervisory colleges**
f. **Other (please specify, in reply to the next question)**

Q26. To ensure stronger EU-level supervision, where should the centre of gravity of supervisory activity be allocated?

a. **European Central Bank and the relevant central banks of issue of Member States;**
b. **ESMA**
c. **Single Supervisory Mechanism and other bank supervisors for non-Banking Union Member States;**
d. **Competent authorities of other Member States**
e. **Supervisory colleges;**
f. **Other (please specify, in reply to the next question).**

As detailed in our answer to Q23, it may be too early to objectively analyse the implications of the EMIR 3 supervisory structure. There is nevertheless a majority within the EACH Membership in favour of a more centralised supervisory architecture for CCPs in the EU to different degrees, although certain CCPs would rather maintain the EMIR 3 status quo due to the legislation's very recent entry into force.

7. Horizontal questions on the supervisory framework

7.1. New direct supervisory mandates and governance models

Q1. Would you agree that EU level supervision is beneficial to achieve a more integrated market? Please provide your answer by choosing from 1 (strongly agree), 2 (rather agree), 3 (neutral), 4 (rather disagree), 5 (strongly disagree), (no opinion)

	1	2	3	4	5	No opinion
						x

Q3. What should be the key objectives behind a decision to grant direct supervision to the ESMA? Please provide your answer by choosing from 1 (agree - very important objective), 2 (agree important objective), 3 (neutral), 4 (rather disagree (i.e. less important), 5 (disagree (not important), (no opinion)

	1	2	3	4	5	No opinion
a) Streamlined supervisory process	x					
b) Single supervisory point of contact and efficiency in the engagement with a single supervisor, instead of multiple NCAs	x					
c) Reduced volume of Level 2 legislation (technical standards and supervisory guidelines	x					
d) Coherent supervisory outcomes for the EU market as a whole	x					
e) more harmonised application of EU rules	x					
f) enhanced pool of expertise and resources	x					
g) building synergies and avoiding duplications,	x					
h) ensuring a high level of supervision across EU	x					
i) reduced costs			x			
j) other						

With respect to the table above, we would like to clarify that we consider the proposed list of items as **conditions/safeguards that should necessarily be satisfied** was ESMA to become the single supervisor, in addition to the potential implications that need to be addressed in case of a centralised EU supervisor as we have outlined in our response to Q21 in the previous section.

7.2. Supervisory convergence

Please select the ESA for which you are replying, this selection will apply to all questions included in this section.

ESMA.

Q7. Please rate the effectiveness of supervisory convergence tools from 1 to 5 (1 least effective, 5 most effective)

	1	2	3	4	5	No opinion
Breach of Union law						x
Binding mediation						x
Peer reviews				x		
Emergency powers					x	
Opinions				x		
Recommendations				x		
Product intervention powers						x
Inquiries						x
No action letters				x		
Guidelines				x		
Colleges of supervisors		x				
Coordination groups						x
Collaboration platforms						x
Warnings						x
Questions and Answers					x	
Supervisory handbooks						x
Stress tests					x	
Union strategic supervisory priorities						x
other, please specify						x

7.3 Increasing the effective use of supervisory convergence tools

Q8. Do you think that the current supervisory convergence tools are used effectively and to the

extent that is possible?

No. EACH Members would like to point out **No Action Letters**, while being considered very useful, are seldom used by ESMA. We therefore consider that a **more effective use of this tool could be made** to address situation of unnecessary regulatory uncertainty for the market. Please refer to Q12 below for further details.

Q9. Do you think that the current governance and decision-making processes within ESAs provide sufficient incentives for the use of supervisory convergence tools?

If your answer is no, what governance changes would you propose to increase the usage of supervisory convergence tools as well as the accountability and transparency of ESAs in using these tools?

- **Move supervisory convergence decision to a Supervisory Committee as described above in the governance section**
- **Move supervisory convergence decisions to an Executive Board as described above in the governance section.**
- **Other (please explain).**

No. An aspect of ESMA's governance model currently in place that EACH Members believe could be subject to improvement is the **difficulty for the European Supervisory Committee in providing No Action Letters**, due to their complex approval procedures.

7.4. Enhancements to existing tools

Please select the ESA(s) for which you are replying, this selection will apply to all questions included this section.

ESMA

Q12. Do you see limitations or weaknesses in supervisory convergence tools in addressing significant divergences in supervisory practices between NCAs?

Supervisory convergence tool	YES	NO
Breach of Union law		
Binding mediation		
Peer reviews		
Emergency powers		
Opinions		
Recommendations		

Product intervention powers		
Inquiries		
No action letters	x	
Guidelines	x	
Colleges of supervisors	x	
Coordination groups		
Collaboration platforms		
Warnings		
Questions and Answers		
Supervisory handbook		
Stress tests		x
Union Strategic Supervisory Priorities		
other, please specify		

ESMA should have the possibility to issue **No Action Letters to address paradoxical cases** such as an obligation to implement a Level 1 requirement before an RTS defining the details of such requirement are finalised. This would provide regulatory certainty to the market and reduce implementation costs, which would increase if obliged to implement twice, once when Level 1 is finalised and once when the RTS is done.

If your answer is yes, what concrete changes would you propose to address the limitations or weaknesses flagged and make these tools more effective?

Supervisory convergence tool	**Potential improvements**
Breach of Union law	/
Binding mediation	/
Peer reviews	/
Emergency powers	/
Opinions	/
Recommendations	/
Product intervention powers	/
Inquiries	/
No action letters	ESMA should have the possibility to issue No Action Letters to address paradoxical cases such as an obligation to implement a Level 1 requirement before an RTS defining the details of such requirement are finalised. This would provide regulatory certainty to the market and reduce implementation costs, which would

	increase if obliged to implement twice, once when Level 1 is finalised and once when the RTS is done.
Guidelines	We would welcome improvements to ESMA's Guidelines so that we don't have to rely on Opinions, Q/As and Recommendations which can create legal uncertainty .
Colleges of supervisors	The number of participants in some college of supervisors for CCPs is very high, including 30+ representatives in some cases. This can render their work unnecessarily inefficient.
Coordination groups	/
Collaboration platforms	/
Warnings	/
Questions and Answers	/
Supervisory handbook	/
Stress test	The experience of EACH Members with the process of CCP stress tests is very positive. ESMA's team seems to always try to improve procedures from the last exercise, listen to suggestions and address unnecessary complexities.
Union Strategic Supervisory Priorities	/
other, please specify	/

7.5. Possible new supervisory convergence tools

Please select the ESA(s) for which you are replying, this selection will apply to all questions included this section.

ESMA.

Q14. Do you see limitations in the current supervisory convergence tools to address home/host issues?

If the answer is yes, please explain:

- **what potential measures could be introduced to assess and ensure the effectiveness of home and host supervision in a given sector**

- **for which sectors would you support the new measures**
- **the cost and expected benefits of these new measures**

Yes. As already mentioned, EACH Members would like to point out **No Action Letters**, while being considered very useful, are seldom used by ESMA. We therefore believe that a **more effective use of this tool could be made** to address situation of unnecessary regulatory uncertainty for the market.