










Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation</p> <p>2022/0403(COD)</p>	Awaiting Council's 1st reading position
<p>Measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets</p> <p>Amending Regulation 2012/648 2010/0250(COD) Amending Regulation 2013/575 2011/0202(COD) Amending Regulation 2017/1131 2013/0306(COD)</p> <p>Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision</p> <p>Legislative priorities Joint Declaration 2022 Joint Declaration 2023-24</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs	 HÜBNER Danuta Maria	25/01/2023
		Shadow rapporteur	
		 LALUCQ Aurore	
		 POULSEN Erik	
		 GRUFFAT Claude	
		 ROOKMAKER Dorien	
		 GUSMÃO José	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Industry, Research and Energy	The committee decided not to give an opinion.	
	 Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	Commission DG	Commissioner	
European Commission	Financial Stability, Financial Services and Capital	MCGUINNESS Mairead	

Key events			
07/12/2022	Legislative proposal published	COM(2022)0697	Summary
01/02/2023	Committee referral announced in Parliament, 1st reading		
28/11/2023	Vote in committee, 1st reading		
28/11/2023	Committee decision to open interinstitutional negotiations with report adopted in committee		
05/12/2023	Committee report tabled for plenary, 1st reading	A9-0398/2023	Summary
11/12/2023	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
13/12/2023	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
04/03/2024	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE759.078 PE759.077	
04/03/2024	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE759.078 GEDA/A/(2024)001022	
24/04/2024	Decision by Parliament, 1st reading	T9-0348/2024	Summary

Technical information	
Procedure reference	2022/0403(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation 2012/648 2010/0250(COD) Amending Regulation 2013/575 2011/0202(COD) Amending Regulation 2017/1131 2013/0306(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Awaiting Council's 1st reading position
Committee dossier	ECON/9/10893

Documentation gateway					
Legislative proposal		COM(2022)0697	07/12/2022	EC	Summary
Document attached to the procedure		SEC(2022)0697	08/12/2022	EC	

Document attached to the procedure		SWD(2022)0697	08/12/2022	EC	
Document attached to the procedure		SWD(2022)0698	08/12/2022	EC	
Economic and Social Committee: opinion, report		CES5896/2022	22/03/2023	ESC	
European Central Bank: opinion, guideline, report		CON/2023/0011 OJ C 204 12.06.2023, p. 0003	26/04/2023	ECB	
Committee draft report		PE749.908	13/06/2023	EP	
Amendments tabled in committee		PE751.545	07/07/2023	EP	
Amendments tabled in committee		PE751.629	07/07/2023	EP	
Committee report tabled for plenary, 1st reading/single reading		A9-0398/2023	05/12/2023	EP	Summary
Text agreed during interinstitutional negotiations		PE759.078	14/02/2024	EP	
Coreper letter confirming interinstitutional agreement		GEDA/A/(2024)001022	15/02/2024	CSL	
Text adopted by Parliament, 1st reading/single reading		T9-0348/2024	24/04/2024	EP	Summary

Additional information

Research document	Briefing	05/03/2024
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Measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets

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

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

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

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

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

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

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

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

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

CONTENT: the Commission proposal introduces targeted amendments to EMIR which aim to improve the central clearing system in the EU, making EU CCPs more efficient and attractive. It addresses the vulnerabilities that stem from the current excessive reliance on certain third-country CCPs deemed to be substantially systemic for the EU, ensuring that the EU has a competitive and efficient clearing system that is safe and resilient.

The proposed regulation will have a positive impact by:

- improving the attractiveness of EU CCPs by, for example, shortening the approval process for offering new services to 10 working days instead of up to 2 years in certain cases;

- enhancing the resilience of the clearing system considering recent developments on energy markets by further enhancing the existing supervisory framework;

- reducing excessive reliance on third-country CCPs, strengthening the EUs open strategic autonomy, by requiring all relevant market participants to hold active accounts at EU CCPs for clearing at least a portion of certain derivative contracts.

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

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

- more transparency on margin models and collateral requirements;

- information on where to clear certain contracts that can be cleared both at a third-country CCP and at an EU CCP; and

- the possibility to use bank and public guarantees.

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

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

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

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

The Committee on Economic and Monetary Affairs adopted the report by Danuta Maria HÜBNER (EPP, PL) on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Active Account

The amended text set a solid active account requirement (AAR) that will require certain financial and non-financial counterparties to have an account at an EU CCP, which includes operational elements such as the ability to handle the counterparty's transactions at short notice if need be and activity elements so that the account is effectively used. This is ensured by a number of requirements, which have to be fulfilled by these accounts, including requirements for counterparties above a certain threshold to clear trades in the most relevant sub-categories of derivatives of substantial systemic importance defined in terms of class of derivative, size and maturity.

Joint supervisory activities

Each authorised CCP authorised should be subject to joint supervisory activities. Those activities should be coordinated by ESMA and the college in the context of the annual review and evaluation process and should be open for the participation of each college member on a voluntary basis.

ESMA should be in charge of establishing and coordinating the joint supervisory activities.

Joint monitoring mechanism

To enhance the ability of relevant Union bodies to have a comprehensive overview of market developments relevant for clearing in the Union, monitor the implementation of certain clearing related requirements of Regulation (EU) No 648/2012 and collectively discuss the potential risks arising from the interconnectedness of different financial actors and other issues related to the financial stability, the report noted the need to establish a cross-sectoral monitoring mechanism bringing together the relevant Union bodies involved in the supervision of Union CCPs, clearing members and clients.

Such Joint Monitoring Mechanism should be managed and chaired by ESMA as the Union authority supervising Union CCPs and supervising systemically important third-country CCPs. Other participants should include representatives from the Commission, the EBA, EIOPA, 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.

To inform future policy decisions, ESMA, in cooperation with the other bodies participating in the Joint Monitoring Mechanism, should submit an annual report to the European Parliament, the Council and the Commission on the results of their activities. This report should include recommendations for potential Union-level action to address identified horizontal risks.

Strengthening ESMA's role in emergency situations

Members considered that ESMA should be provided with a coordination role in cross-border emergency situations. Therefore, ESMA should be able to convene meetings of the CCP Supervisory Committee, either on its own initiative or upon request, potentially with an enlarged

composition, to coordinate effectively competent authorities responses in emergency situations. ESMA should also be able to ask, by simple request, information from market participants which is necessary for ESMA to perform its coordination function in those situations and to be able to issue recommendations to the competent authority.

Lastly, given that developments in financial markets could have direct implications for the banking system or for monetary policy decisions, representatives of relevant central banks of issue should always be invited to participate in the coordination meetings of the CCP Supervisory Committee in response to such emergency situations.

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

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

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

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

The proposal aims at:

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

The amended text:

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

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

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

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

Transparency				
POULSEN Erik	Shadow rapporteur	ECON	21/11/2023	Deutsche Börse AG
HÜBNER Danuta Maria	Rapporteur	ECON	13/10/2023	London Stock Exchange Group
HÜBNER Danuta	Rapporteur	ECON	13/10/2023	FIA European Principal Traders Association, part of FIA, Inc.

Maria				
POULSEN Erik	Shadow rapporteur	ECON	10/10/2023	Finance Denmark
HÜBNER Danuta Maria	Rapporteur	ECON	09/10/2023	Intercontinental Exchange, Inc.
HÜBNER Danuta Maria	Rapporteur	ECON	26/09/2023	Citigroup Inc.
LALUCQ Aurore	Shadow rapporteur	ECON	26/09/2023	ESMA
HÜBNER Danuta Maria	Rapporteur	ECON	25/09/2023	European Systemic Risk Board (ESRB)
HÜBNER Danuta Maria	Rapporteur	ECON	22/09/2023	European Association of Central Counterparty Clearing Houses
HÜBNER Danuta Maria	Rapporteur	ECON	19/09/2023	Banque de France
FERBER Markus	Member	22/02/2024	Deutscher Sparkassen- und Giroverband e. V.	
DE LANGE Esther	Member	29/06/2023	European Fund and Asset Management Association	
DE LANGE Esther	Member	28/06/2023	Cboe Clear Europe N.V.	