

Keynote speech

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The completion of the Review of the European Market Infrastructure Regulation – otherwise known as EMIR 3 – marks **a new milestone in European efforts in supporting safe and resilient CCPs** and safeguarding financial stability in the Union.

The political agreement reached on EMIR 3 – likely many such EU agreements – has been the **outcome of protracted and difficult negotiations** between the European Commission, the European Parliament, and Member States – with widely differing priorities and objectives.

While not taking a full step towards a more consistent, streamlined and coherent supervision for EU CCPs, **EMIR 3 contains a significant number of new or enhanced mandates for ESMA** – leaving some unresolved issues potentially to an EMIR 3.2 or EMIR 4. It also contains measures aimed at reducing excessive EU exposures to UK CCPs.

All this will now need to be filled with life.

1. Enhancing the competitiveness of EU CCPs

First and foremost, one of the most positive outcomes of these discussions is the **drastic reduction of the timelines** for approval of extensions of services and validations of significant changes to risk models, i.e. time to market.

From processes which could in certain cases take years due to the absence of clear deadlines at the national level (compared to 20 working days for ESMA), strict timelines have been put in place to limit the duration of these approval processes:

- **137 working days** for an initial authorisation
- **87 working days** for an extension of service or validation of a significant changes to a risk model – or **around 4 months in plain English**

These processes can be accelerated and brought down to **around 3 weeks for changes deemed minor or not significant**. The final agreement even clarifies that certain very minor changes to products cleared do not require a formal ex ante approval before being launched.

These changes will significantly reduce **the time to market for CCPs launching new products or changes to risk models**, enabling them to act more swiftly in an increasingly competitive global environment.

We at ESMA will actively work in the next year to further **clarify what should be deemed material or significant changes or not** in order to avoid supervisory divergence between CCPs and NCAs in the Union. We will **ensure that our approval processes are clear and efficient to support the attractiveness of EU CCPs and EU financial markets**.

2. Strengthening supervisory convergence and CCP resilience

In response to these faster and leaner approval processes, the agreement on EMIR 3 also requires **stronger supervision by NCAs and enhanced supervisory convergence by ESMA throughout the year**, and in particular during the Annual Review process.

National Competent Authorities (NCAs) will be required to conduct at least **annual onsite inspections at EU CCPs**, with the possibility of involving ESMA for additional support.

ESMA will also be asked to input on the frequency and depth of the review, to adopt an Opinion on the Annual Report prepared by the NCA and, if necessary, to call for a meeting between the NCA and the CCP where concerns of compliance by EU CCPs with EMIR may arise.

EU CCPs will also be required to **report on a monthly basis** to the same database used for submitting their applications for new products and models – in a sort of one stop shop – which will be available to the NCAs, ESMA and the college members, in order to avoid that CCPs report to multiple lines.

Finally, the Review also entrusts ESMA with significant new mandates to **strengthen the regulatory system applicable** to CCPs and the broader clearing ecosystem through technical standards by further specifying participation requirements, increasing margin transparency (including by clearing members to clients), and expanding eligible collateral for non-financial counterparties.

ESMA has also been tasked with developing a number of forward-looking Reports, for instance whether EMIR should be extended to CCPs clearing spot commodities or crypto-assets, or on the considerations around CCP central bank access and the role of a banking licence.

3. Reducing risks from excessive exposures to third-countries

Moving from EU CCPs to TC-CCPs, we are very pleased to see that quite a number of our recommendations in our December 2021 Report on systemically important UK CCPs have been taken on board.

First and foremost, the requirement on EU clearing members or clients to hold accounts at EU CCPs will help **develop resilient back up clearing arrangements** in case of a disruption at a substantially systemic CCP, whilst at the same time, start reducing excessive EU exposures at UK CCPs. In particular for EU counterparties above the EUR 6 billion threshold, the requirement to clear a minimum number of representative trades at EU CCPs will help **ensure that these accounts are effectively used**.

ESMA has been tasked to further specify the representativeness criteria and set the number of subcategories per class of derivative contracts to be represented in the active account, as well as the duration of the relevant reference periods depending on the size of the counterparty.

Therefore, **our first priority will be to clarify those aspects needed for the active account requirement (AAR) to be implemented within six months** of the entry into force of the Review.

EMIR 3 has also established a new forum of EU supervisors to assist ESMA amongst other things with the proper implementation of the AAR. Chaired and managed by ESMA, the Joint

Monitoring Mechanism (JMM) will be tasked to monitor the implementation of active account at aggregate EU level, including the reduction of EU exposures to substantially systemic CCPs and developments at EU CCPs clearing the relevant products. Where necessary, the JMM may recommend that ESMA launches a breach of Union law procedure against NCAs failing to implement the AAR or that ESMA reviews its RTS.

Finally, ESMA will have to assess, 18 months following the entry into force of EMIR 3, whether the deal reached in February will have been effective in reducing exposures to UK CCPs or whether further measures may be needed, such as quantitative thresholds, for the Commission to consider a revised legislative proposal 6 months later.

4. Mitigating risks from systemic third-country CCPs

Second, the final agreement also builds on key recommendations by ESMA to mitigate risks that would remain at systemically important UK CCPs. The final agreement clarifies that **granting comparable compliance does not limit or void ESMA's supervisory and enforcement powers** over the Tier 2 CCP. In practice, this will mean that the Tier 2 CCPs will have to continue submitting information and data to ESMA on a regular basis in order to ensure that ESMA is able to supervise the CCPs' compliance with EMIR or comparable requirements.

In addition, EMIR 3 also creates a split between cooperation arrangements required for Tier 1 and Tier 2 CCPs, **enhancing the later for crisis management situations**. For substantially systemic CCPs, it will require that **ESMA be consulted on the preparation and assessment of recovery plans** and on the preparation of the resolution plans, as well as be informed of any subsequent material changes to those plans or of their activation. In practice, this will mean a need to review the Memorandum of Understanding with the Bank of England, while leaving the other MoUs relevant for Tier 1 CCPs untouched.

As you can by now gather, EMIR 3 sets out a range of new objectives but a lot in practise still needs to be developed, calibrated and implemented to bring these new tools to life. In addition to the points already outlined, ESMA will be mandated to run a central database, co-manage 14 colleges, and prepare more than 20 level 2 measures (almost as much than in EMIR 1).

We will have to deliver a lot within very short timelines, without compromising our already existing supervisory activities. This means that we will have to carefully manage our resources and time, but I hope that we can count on your input and cooperation in delivering these objectives successfully.