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Keynote speech

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Implementation of EMIR3 from a regulatory perspective

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Good morning esteemed colleagues and industry practitioners.

Introduction

It gives me great pleasure to participate in this conference, and I would like to thank you for the opportunity to deliver this keynote speech.

Today, I would like to give you the perspective of a regulator on the main topic of the conference, the EMIR3 Active Account Requirement (AAR). I start with an historical perspective that sheds light on why we are where we are. Then, I will cover some practical aspects of the AAR and outline ESMA's preparations for implementing this cornerstone of EMIR 3.

Let's start, however, with an important development in the European clearing landscape, which will affect the way clearing services are conducted in our continent – the recent amendments to the European Market Infrastructure Regulation or EMIR 3. This new piece of EU legislation, which entered into force in December 2024, aims to make the EU's clearing ecosystem more attractive and robust, thereby preserving financial stability, and supporting a well-functioning capital markets union.

1. An overview of EMIR 3

As you know, EMIR was designed to enhance the stability and transparency of the EU financial markets following the 2008 global financial crisis. EMIR 3 represents the next evolution in this regulatory framework, with three core objectives when it comes to CCPs.

The first objective is to strengthen the supervision of EU CCPs by deepening supervisory convergence and consistency. Key measures to achieve this include standardising supervisory practices and improving supervisory outcomes across EU CCPs. For example, ESMA will co-

[1] I would like to thank Michalis Vasios for his substantial contribution to this speech, and Klaus Löber for his helpful comments.

chair the EMIR CCP supervisory colleges and issue opinions on National Competent Authorities' (NCA) annual reviews.

The second objective is to make the EU clearing system more competitive, attractive and resilient. To achieve this, EMIR 3 streamlines and enhances existing rules and supervisory processes while fostering greater operational efficiency. This includes:

- Shortening opinion and validation timelines to speed up product launches and model reviews, e.g., by allowing CCPs to implement extensions of services for business-as-usual changes with a simplified process,
- Streamlining and standardising the CCP Supervisory Committee and college review processes, reducing delays by standardising the required documents for reviews such as validations of changes to margin models,
- Improving operational efficiency through the use of a central database that facilitates a swift and flexible assessment of applications, while fostering effective cooperation between competent authorities, ESMA, and supervisory colleges. When this central platform is implemented, it will serve as a single point of access for CCPs with their supervisors cutting significantly administrative burdens.
- Enhancing system-wide risk monitoring and coordination during crisis. For example, EMIR 3 introduces the new cross-sectoral Joint Monitoring Mechanism (JMM) and strengthens the crisis management framework when events with a cross-border impact emerge, with ESMA having a coordination role.

The third objective is to further reduce the EU dependency on third-country CCPs. EMIR 3 supports the direct supervision of Tier CCPs with additional tools. These include enhanced cooperation arrangements between ESMA and the relevant third-country authorities for more frequent and comprehensive information exchange, including on recovery and resolution related to one of the UK CCPs, as laid down in a recently published MoU. Additionally, EMIR 3 allows ESMA to request information from Tier 2 CCPs periodically to ensure effective supervision.

The AAR is the key change, in this regard, aiming to reduce the EU dependency on third-country CCPs. Under the AAR, EU counterparties must hold active accounts at EU CCPs and clear a representative portion of certain derivative contracts within the single market.

To conclude the overview of EMIR 3, I want to reaffirm that ESMA remains fully committed to advancing the aforementioned policy objectives. In the coming years, our collective effort will be on ensuring the effective rollout of EMIR 3, despite the challenging timelines. We will do so by working closely with all stakeholders, including market participants, to ensure a smooth implementation while being mindful to limit burdens.

2. EU dependency on third-country CCPs: historical context

Before diving into the practical details of the AAR, it's important to provide some historical context.

In 2021, ESMA published a report pursuant to Article 25(2c) of EMIR on the clearing services of substantial systemic importance. The report highlighted the significant reliance of the EU on systemically important UK-based CCPs (so-called Tier 2 CCPs), namely the LCH Ltd and ICE Clear Europe Ltd (ICEU) in particular for the clearing of certain derivatives, including

- OTC interest rate derivatives (IRD) denominated in euro,
- OTC IRD denominated in Polish zloty,
- Credit default swaps (CDS) denominated in euro, and
- Short-term interest rate (STIR) derivatives denominated in euro.

The clearing segments of Tier 2 CCPs for these derivatives have therefore been considered as of substantial systemic importance. Dependencies have been analysed as follows:

- The large dependencies of the EU stem from the size of the clearing services (using different metrics), in combination with their interconnectedness with EU clearing members and clients in multiple Member States, their dominant nature, and the perceived lack of viable alternatives.
- For example, LCH Ltd cleared approximately 80% of OTC interest rate derivatives denominated in euro. This market share has stayed relatively stable over the last 4 years. It remained also a dominant CCP for OTC IRD denominated in Polish zloty. As a result, the exposures of EU clearing members towards Tier 2 CCPs are substantial.
- The clearing of the three-month Euribor Futures STIR market has been dominated by ICEU despite the growing open interest at EU CCPs in recent years, with a market share of over 95% in the end of 2024.
- As such, Tier 2 CCPs are of relevance for financial stability in the EU and for EUR monetary policy implementation, with SwapClear services for PLN interest rate derivatives (IRD) being relevant for the financial stability in Poland.
- Since 2021, some dependencies reduced, notably with the partial migration of CDS clearing in the EU, following the closure of ICEU CDS business. As of 2023, EU CCPs now account for approximately 37% of the EUR CDS market. In light of this development, the non-EU part of the EUR CDS market has become less systemically important.

ESMA's analysis in 2021 underscored the risks associated with this dependency. With a substantial portion of EU derivatives clearing handled by UK CCPs, the EU faces potential systemic risks in the event of market disruption or crisis. In times of crisis, changes to eligible collateral, margins, or haircuts may create feedback loops that negatively impact sovereign bond markets of one or more Member States, and more broadly EU financial stability. Disruptions in markets relevant for monetary policy implementation may hamper the transmission mechanism critical to EU central banks. During recovery and resolution events, the Tier 2 CCPs, or the UK resolution authority, may take discretionary measures potentially adversely impacting EU clearing members.

The report also highlighted insufficient supervisory powers in the context of a crisis, or a Tier 2 recovery or resolution. The limitations of the EU to intervene could raise concerns about financial stability.

To mitigate these risks, ESMA recommended that the EU reduce its reliance on third-country CCPs and promote the development of EU CCPs. Additional recommendations included the expansion of ESMA's supervisory and crisis management toolbox, including by granting more powers in respect of the recovery or resolution plans for Tier 2 CCPs.

This report laid the foundation for regulatory changes, including the AAR under EMIR 3, which we are discussing today.

3. The Active Account Requirement

Under the new EMIR 3 regulation, EU counterparties will be required to maintain operational and representative accounts at EU CCPs for clearing certain derivatives. This change is part of the broader EU effort to reduce reliance on third-country CCPs, ensuring greater financial stability and regulatory control within the EU.

In November 2024, ESMA published a Consultation Paper outlining the conditions for the AAR. The key points covered included:

- Scope of application
- Operational conditions
- Representativeness obligation
- Reporting requirements.

Let me now provide some practical insights on each of these points.

3.1. Scope of application

The derivative contracts subject to the AAR are OTC IRD denominated in euro and Polish zloty and STIR denominated in euro. EUR CDS have been excluded from the scope of AAR, as ICE Clear Europe Ltd ceased clearing these contracts at the end of 2023.

In terms of counterparties, EMIR 3 sets a double condition: they must both be subject to the clearing obligation and exceed the clearing thresholds for relevant derivative contracts. Specifically, this means exceeding EUR 3 billion in gross notional value either in an individual category or across all categories.

When assessing whether it is subject to the AAR, it is ESMA's understanding that a counterparty belonging to a group subject to consolidated supervision in the EU must include all relevant derivative contracts cleared by any entity within the group (excluding intragroup transactions).

However, ESMA received several comments on the Consultation Paper requesting clarification on the application of AAR at the entity versus the group level. While this is largely a matter of interpretation of the Level 1 text, ESMA acknowledges the importance of this issue and will work closely with stakeholders to ensure a consistent implementation across the industry.

3.2. Operational conditions

EU counterparties must maintain active accounts that are functional and able to clear all relevant in-scope transactions. These accounts must also be operationally capable of handling large volumes at short notice from a clearing service of substantial systemic importance. Additionally, counterparties must demonstrate that these accounts have the capacity to withstand a substantial increase in outstanding and new clearing activity (the so-called 'stress-testing requirement').

ESMA is currently considering the feedback received on the specific aspects of stress-testing, including its frequency.

3.3. Representativeness obligation

Counterparties subject to the AAR with exposures to relevant derivative classes exceeding EUR 6 billion are required to clear a minimum number of trades at EU CCPs. They must also ensure that this activity is representative of the derivative contracts cleared at the clearing services of substantial systemic importance.

Let me explain how ESMA defined the details of the representativeness obligation, including the classes of derivatives, subcategories, the number of most relevant subcategories, and the duration of the reference period. To do so, ESMA staff analysed over 90 million trades across different IRD classes from more than 1,700 EEA counterparties, using EMIR trade repository (TR) data. These trades accounted for about EUR 660 trillion notional cleared between March 2023 and March 2024.

In a first step, ESMA defined the relevant derivative classes. ESMA found that interest rate swaps, forward rate agreements and overnight interest rate swaps account for over 99% of the EUR OTC IRD market at LCH Ltd. The data further showed regular activity of these derivative at EU CCPs, suggesting an active and liquid market. We approached the PLN OTC IRD and EUR STIR markets in a similar fashion.

Regarding subcategories, ESMA analysed the actual portfolios of counterparties likely subject to the representativeness obligation. ESMA considered various factors that could influence the derivation of maturity or trade buckets, such as aggregate market dynamics, and differences in clearing patterns between different counterparty types or between different CCPs. This analysis led ESMA to define the maximum possible number of subcategories for the EUR IRD market, but fewer subcategories for EUR STIR and PLN OTC IRD, reflecting their smaller size and other market characteristics. The aim was to give EU counterparties flexibility in meeting the representativeness obligation, especially for the less liquid products.

We used a similar approach for defining the number of most relevant subcategories and the duration of the reference period: more relevant subcategories and shorter reference periods were set for more liquid derivative classes, and vice versa.

This tailored approach aimed to ease compliance for EU counterparties with the AAR, however, without compromising the effectiveness of the representativeness obligation. Based on the broadly positive feedback received, we believe that ESMA’s approach has generally been a useful interpretation of the Level 1 text.

3.4. Reporting requirements

The AAR requires counterparties to report their activity and risk exposures every six months to their competent authority requirements.

In the AAR Consultation Paper, ESMA proposed reporting information such as gross notional, net notional and number trades. Additionally, ESMA proposed reporting Unique Trade Identifiers (UTIs) for the relevant derivative contracts subject to the AAR to enable competent authorities to better perform their supervisory duties by verifying the information reported by counterparties against the reports submitted to TRs under Article 9 of EMIR.

It is fair to say that the proposed approach has drawn significant attention from stakeholders, with feedback expressing concerns about the operational burden. We take due note of this feedback, particularly the comments calling to avoid duplication of reporting.

In response, ESMA is considering reducing reporting requirements, while ensuring that competent authorities still receive enough data to assess AAR compliance. For example, we may reuse existing data, where possible.

4. Conclusion and next steps

Following the publication of the Consultation Paper on AAR conditions in November, ESMA is now addressing the feedback received, and is on track to deliver a draft Regulatory Technical Standard (RTS) to the European Commission by June 2025.

ESMA is also preparing for the monitoring of the effectiveness of the implementation of the AAR through the establishment of the JMM. The JMM, which is chaired and managed by ESMA, is cross-sectoral in nature, with members and observers from EU bodies involved in the supervision of EU CCPs, clearing members and clients, thus capturing the entire clearing ecosystem. Beyond AAR monitoring, the JMM is also tasked to monitor risks arising from the interconnectedness of different financial actors and other issues related to the financial stability.

Furthermore, EMIR3 prescribes that ESMA should draft a report to the co-legislators on the effectiveness of the AAR in reducing dependencies on the Tier 2 CCPs. This report should contain an analysis of the development of exposures towards UK and EU CCPs, following the introduction of the AAR. In addition, ESMA should conduct an impact assessment of complementing measures, including quantitative thresholds.

To sum up, the introduction of the active account requirement under EMIR 3 marks a shift in how EU counterparties handle their clearing operations, requiring more clearing activity to take place at EU CCPs. This aligns with the EU’s strategic goal of reducing excessive reliance on third-country infrastructures and increasing the integration and resilience of European financial markets.

ESMA stands ready to work with all stakeholders to achieve this goal.