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Subject:	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

Delegations will find attached document COM(2022) 697 final.

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2022/0403 (COD)

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

(Text with EEA relevance)

{SEC(2022) 697 final} - {SWD(2022) 697 final} - {SWD(2022) 698 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EU) No 648/2012[1] (the European Market Infrastructure Regulation or "EMIR") regulates derivatives transactions, including measures to limit their risks through clearing in central counterparties (CCPs).[2] 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.

EMIR was adopted in the wake of the 2008/2009 financial crisis to promote financial stability and to make markets more transparent, more standardised, and thus safer. EMIR requires that derivatives transactions are reported to ensure market transparency for regulators and supervisors and that their risks are appropriately mitigated through central clearing at a CCP or by exchanging collateral, known as 'margin', in bilateral transactions. CCPs, and the risks they manage, have grown considerably since the adoption of EMIR.

In 2017, the Commission published two legislative proposals amending EMIR, both of which were adopted by the co-legislators in 2019. EMIR REFIT[3] recalibrated some of the requirements under EMIR to ensure their proportionality, while ensuring financial stability. Acknowledging the emerging issues related to the increasing concentration of risks in CCPs, in particular third-country CCPs, EMIR 2.2[4] revised the supervisory framework and set out a process for assessing the systemic nature of third-country CCPs by the European Securities and Markets Authority (ESMA) in cooperation with the European Systemic Risk Board (ESRB) and the central banks of issue. EMIR is complemented by the CCP Recovery and Resolution Regulation[5], adopted in 2020,[6] to prepare for the unlikely – though massively impactful - event that an EU CCP faces severe financial distress.[7]

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

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

2 See Annex 7 of the accompnaying Impact Assessment for a detailed background on derivatives and how CCPs operate within financial markets.

3 Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance.); OJ L 141, 28.5.2019, p. 42–63.

4 Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs; OJ L 322, 12.12.2019, p. 1–44.

5 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties, OJ L 22, 22.1.2021, p. 1–102.

6 The Regulation builds on the standards developed by the Financial Stability Board in the aftermath of the financial crisis. See "Key Attributes of Effective Resolution Regimes for Financial Institutions", Financial Stability Board (November 2011) http://www.financialstabilityboard.org/publications/r_111104cc.pdf. Updated in October 2014 with sector-specific annexes http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pd .

7 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties, OJ L 22, 22.1.2021, p. 1–102.

attract business both within the EU and internationally. The supervisory approval procedures for launching new clearing services and activities by EU CCPs, as well as changes in their risk models, are in many cases unnecessarily long and burdensome. The current rules are there to ensure the safety and soundness of EU CCPs, but this could be done in many ways and the existing processes have been challenged as too slow and, at times, disproportionate in light of the envisaged change. It should not take years for approving a new product, and changes to risk models need to be swift to reflect changing market and economic circumstances. Delays in approvals increase costs and reduce the attractiveness of EU CCPs, and consequently of the EU as a place to do business. The proposal aims at mitigating these obstacles in order to foster modern and competitive CCPs in the EU that can attract business.

EMIR provides a comprehensive and robust prudential framework for CCPs and the newly adopted CCP Recovery and Resolution Regulation further strengthens the soundness of EU CCPs. This proposal aims for the EU to continue to base the evolution of its central clearing ecosystem on the strength of its rules and supervision. Robust and safe CCPs enhance the trust of the financial system and crucially support the liquidity of key markets. A safe, robust and resilient clearing ecosystem is a pre-condition for it to grow further. The EU central clearing ecosystem should enable EU firms to hedge their risks efficiently and safely, while at the same time safeguarding the wider financial stability. In this way, central clearing will support the EU economy. This proposal aims to put firms in a better position by being able to predict the liquidity needs associated with central clearing. A competitive and efficient EU clearing ecosystem will increase central clearing activities, but central clearing also entails risks by centralising transactions in a few CCPs being financially systemically important. Hence, those risks must be appropriately managed by CCPs and CCPs must continue to be thoroughly supervised both at the national and the wider EU level. Therefore, this proposal aims at ensuring a robust and joined-up supervision, building on the supervisory system the EU currently has in place.

In addition, since 2017, concerns have been repeatedly expressed about the ongoing risks to the EU financial stability arising from the excessive concentration of clearing in some third-country CCPs, notably in a stress scenario. High-risk but low-probability events can happen, and the EU must be prepared to face them[8]. While EU CCPs have generally proven resilient, experience has shown that the EU clearing ecosystem can be made stronger, to the benefit of financial stability. However, open strategic autonomy also means that the EU needs to safeguard itself against the financial stability risks which can arise when EU market participants are excessively reliant on third-country entities, as this can be a source of vulnerability. Therefore, this proposal aims at making the equivalence framework in EMIR more proportionate and to better tailor cooperation with foreign supervisors taking into account the risks posed by CCPs based in third countries – and without compromising on the need for third countries to have sound rules in place. It is also proposed that the equivalence procedure is made simpler when the risks involved in central clearing in a third country are particularly low. In addition, this proposal seeks to build up the EU's central clearing capacity and thereby increase liquidity at EU CCPs with the aim to reduce the risks posed to the EU financial stability by excessive exposures to third-country CCPs. Therefore, this proposal requires all market participants subject to a clearing obligation, to hold active accounts at EU CCPs for clearing products that have been identified by ESMA as of substantial systemic importance for the EU financial stability.

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This proposal is complemented by a proposal for a Directive introducing a limited number of changes to Directive 2013/36/EU[9] (Capital Requirements Directive or 'CRD'), Directive (EU) 2019/2034[10] (Investment Firms Directive or 'IFD') and Directive 2009/65/EU[11] (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.

- **Consistency with existing policy provisions in the policy area**

This proposal is related to, and consistent with, other EU policies and ongoing initiatives that aim to (i) promote the Capital Markets Union (CMU) [12], (ii) reinforce the EU's open strategic autonomy and (iii) enhance the efficiency and effectiveness of EU-level supervision.

First, clearing capacity is an important dimension for the CMU. The CMU is about building deep and liquid EU capital markets that can serve the needs of EU citizens, businesses and financial institutions. The Covid-19 crisis has made it more urgent to deliver on CMU as market-based financing is an essential component for the European economy's recovery and the return to long-term growth. Safe, robust and competitive post-trade arrangements, in particular central clearing, in the EU is essential for a well-functioning CMU. The proposed legislative changes, including to further strengthen the supervisory framework, would contribute to the development of a more efficient and safer post-trading landscape in the EU.

Second, competitive, well-developed and resilient EU CCPs are a pre-condition for the EU's open strategic autonomy. The Commission Communication on open strategic autonomy[13] sets out how the EU can reinforce its open strategic autonomy in the macro-economic and financial fields by, in particular, but not only, further developing EU financial market infrastructures and increasing their resilience. Building a strong EU central clearing system with robust capacity reduces risks stemming from excessive reliance on third-country CCPs and their supervisors.

Third, **recent developments in energy markets**, with several energy companies facing liquidity issues when using derivatives markets, have also illustrated that EMIR needs to be enhanced so that the risks to the EU's financial stability continue to be mitigated in light of new challenges. This means building a safe, robust and competitive EU central clearing ecosystem, able to withstand economic shocks.

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

10 Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, OJ L 314, 5.12.2019.

11 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), OJ L 302, 17.11.2009.

12 Communication from the Commission, A Capital Markets Union for people and businesses – New action plan, COM(2020) 590

13 Communication from the Commission to The European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions The European economic and financial system: fostering openness, strength and resilience; COM/2021/32 final.

- **Consistency with other Union policies**

This initiative should be viewed within the context of the broader Commission agenda to make the EU markets safer, more robust, more efficient and competitive. It aims at ensuring that post-trade arrangements, in particular central clearing, that are an essential element of capital markets are equally safe, robust, efficient and competitive. A fully functioning and integrated market for capital will allow the EU's economy to grow in a sustainable way and be more competitive, in line with the strategic priority of the Commission for an Economy that Works for People, focused on creating the right conditions for job creation, growth and investment.

The initiative in question has no direct and/or identifiable impacts leading to significant harm or affecting the consistency with the climate-neutrality objectives and the obligations of the European Climate Law.[14]

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

EMIR sets out the regulatory and supervisory framework for CCPs established in the EU and third-country CCPs that provide central clearing services to clearing members or trading venues established in the EU. The legal basis for EMIR is Article 114 of the Treaty of the Functioning of the European Union (TFEU) as it establishes common rules for OTC derivatives, CCPs and trade repositories to avoid divergent national measures or practices and obstacles to the proper functioning of the internal market while ensuring financial stability. Considering that this initiative proposes further policy actions to ensure the achievement of these objectives, the related legislative proposal would be adopted under the same legal basis.

- **Subsidiarity (for non-exclusive competence)**

The problems identified in the impact assessment cannot be addressed by Member States acting alone and necessitate EU action. This proposal amends EMIR, in particular to enhance the attractiveness of EU CCPs by facilitating their ability to bring new products to market and reducing compliance costs and strengthening EU-level supervision of EU CCPs. EU action would therefore lead to reducing EU's excessive reliance on third-country CCPs and thus reduce the risks to EU financial stability. A safe, robust, efficient and competitive market for central clearing services contributes to deeper, more liquid markets in the EU and is essential for a well-functioning CMU.

Member States and national supervisors cannot on their own solve the systemic risks of highly integrated and interconnected CCPs that operate on a cross-border basis beyond the scope of national jurisdictions. Nor can they mitigate risks arising from diverging national supervisory practices. Member States also cannot on their own enhance the attractiveness of EU CCPs and address the inefficiencies of the framework for the cooperation of national supervisors and EU authorities. As such, the aim of EMIR to increase the safety, robustness, efficiency and competitiveness of EU CCPs in the single market and ensure financial stability cannot be sufficiently achieved by Member States, as the co-legislators acknowledged in 2012 when adopting EMIR (and in 2019 when adopting EMIR REFIT and EMIR 2.2). Therefore,

[14] Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021.

by reason of the scale of actions, these objectives can be better achieved at EU level in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

The proposal aims to ensure that the objectives of EMIR are met in a proportionate, effective and efficient manner. Given the nature of this proposal, there is a key trade-off between the effectiveness of measures to increase clearing at EU CCPs and the cost impact on clearing participants. This trade-off is to be considered in the calibration and design of the measures themselves, so as to make costs proportionate. The proposal also reviews the supervisory arrangements for EU CCPs to address the challenges they face due to inefficient authorisation processes. In addition, changes to the supervisory architecture aim at reflecting the need for increased cooperation of authorities in the EU due to the growing importance of EU CCPs while preserving the fiscal responsibilities of the authorities of the Member State of establishment. Furthermore, the introduction of an active account requirement, the establishment of monitoring at EU level regarding the transfer of EU firms' excessive exposures from systemically important third-country CCPs ('Tier 2 CCPs') to EU CCPs and the ex-post approval/non-objection procedure for certain changes to CCPs' risk models as well as for the extension of the services they offer, take into account the concerns raised by stakeholders, including ESMA, while safeguarding the objectives of EMIR. The proposal does not go beyond what is necessary to achieve these objectives, considering the need to monitor and to mitigate any risks the operations of CCPs, including third-country CCPs, may raise for financial stability. The proportionality of the preferred policy options is further assessed in Chapters 7 and 8 of the accompanying Impact Assessment.

- **Choice of the instrument**

EMIR is a Regulation and thus it needs to be amended by a legal instrument of the same nature.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission services consulted extensively, engaging with a broad range of stakeholders, including EU bodies (ECB, European Systemic Risk Board (ESRB), European Supervisory Authorities (ESAs)), Member States, members of the European Parliament's Economic and Monetary Affairs Committee, the financial services sector (banks, pension funds, investment funds, insurance companies, etc.) as well as non-financial corporates to evaluate whether EMIR sufficiently ensures EU financial stability. This process showed that there are ongoing risks to EU financial stability due to the excessive concentration of clearing in a few third-country CCPs. These risks are particularly relevant in a stress scenario.

Nonetheless, considering the relatively recent entry into force of EMIR 2.2 and the fact that some requirements do not apply yet,[15] the Commission services did not consider it appropriate to prepare a full back-to-back evaluation of the entire framework. Instead, key areas were identified upfront based on stakeholder input and internal analysis (Section 3 of the

[15] For example, the regulatory technical standards (RTS) on the procedures for the approval of an extension of services or the approval of changes to risk models under Articles 15 and 49 of EMIR respectively have not been adopted yet.

accompanying Impact Assessment on the problem definition explains in detail the the inefficiencies and ineffectiveness of the current rules).

- **Stakeholder consultations**

The Commission has consulted stakeholders throughout the process of preparing this proposal. In particular through:

- a Commission targeted consultation between 8 February and 22 March 2022[16]. It was decided that the consultation should be targeted and the questions were focused on a very specific and rather technical area. 71 stakeholders responded to the targeted consultation via the online form while some confidential responses were also submitted via email.
- a Commission Call for Evidence between 8 February and 8 March 2022[17].
- consultations of stakeholders through the Working Group on the opportunities and challenges of transferring derivatives from the United Kingdom (UK) to the EU, in the first half of 2021 including several stakeholder outreach meetings in February, March and June 2021.
- meeting with Members of the European Parliament on 4 May as well as bilateral meetings subsequently.
- meeting with Member States' experts on 30 March 2022, 16 June 2022 and 8 November 2022.
- meetings of the Financial Services Committee on 2 February and 16 March 2022.
- meetings of the Economic and Financial Committee on 18 February and 29 March 2022.
- bilateral meetings with stakeholders as well as confidential information received from a wide range of stakeholders.

The main messages of this consultative process were:

- Work starting in 2021 showed that improving the attractiveness of clearing, encouraging the development of EU infrastructures and strengthening the supervisory arrangements in the EU will take time.
- A variety of measures were identified that could help improve the attractiveness of EU CCPs and clearing activities as well as ensure that their risks are appropriately managed and supervised.
- These identified measures are not only within the remit of the Commission and co-legislators, but could also potentially require actions from the ECB, national central banks, ESAs, national supervisory authorities, CCPs and banks.
- The consultation showed that market participants generally prefer a market-driven approach to regulatory measures, to minimise costs and for EU market participants to remain competitive internationally. Nevertheless, regulatory measures were

16 https://ec.europa.eu/info/business-economy-euro/banking-and-finance/regulatory-process-financial-services/consultations-banking-and-finance/targeted-consultation-review-central-clearing-framework-eu_en

17 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13378-Derivatives-clearing-Review-of-the-European-Market-Infrastructure-Regulation_en

supported to a certain extent, especially when allowing for a faster approval process for CCPs' new products and services[18].

- Measures deemed useful to enhance EU CCP's attractiveness were: maintaining an active account with an EU CCP, measures to facilitate expanding services by EU CCPs, broadening the scope of clearing participants, amending hedge accounting rules and enhancing funding and liquidity management conditions for EU CCPs.

The proposal takes this stakeholder feedback into account, as well as the feedback received through meetings with a broad range of stakeholders, EU authorities and institutions. It introduces targeted amendments to EMIR aimed at:

- Improving the attractiveness of EU CCPs by simplifying the procedures for launching products and changing models and parameters and introducing a non-objection/ex-post approval/review for certain changes. This allows EU CCPs to introduce new products and model changes more quickly while ensuring adequate risk considerations are upheld and without endangering financial stability and therefore making EU CCPs more competitive.
- Encouraging central clearing in the EU to safeguard financial stability by requiring clearing members and clients to hold, directly or indirectly, an active account at EU CCPs, and facilitating clearing by clients will help to reduce exposures to, and with it excessive reliance on, Tier 2 third-country CCPs which is a risk to the financial stability of the EU.
- Enhancing the assessment and management of cross-border risk by ensuring that authorities in the EU have adequate powers and information to monitor risks in relation to both EU and third-country CCPs, including by enhancing their supervisory cooperation within the EU.
- **Collection and use of expertise**

In preparing this proposal the Commission relied on the following external expertise and data:

- **ESMA's Report** under Article 25(2c) of EMIR submitted to the Commission in December 2021[19]; the report also took into account answers to ESMA's surveys and data collection exercises from CCPs and clearing participants;
- **ESRB's response** to ESMA's consultation under Article 25 (2c) EMIR, issued in December 2021[20];
- **Bank for International Settlement** statistics;
- **CEPS**, 2021, "Setting EU CCP policy – much more than meets the eye"; and
- **ClarusFT** database.

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18 Rather no/limited support regarding higher capital requirements in the CRR for exposures to Tier 2 non-EU CCPs , exposure reduction targets toward specific Tier 2 non- EU CCPs, an obligation to clear in the EU and macroprudential tools.

19 ESMA report on UK CCPs, 2021.

20 https://www.esrb.europa.eu/pub/pdf/other/esrb.letter220120_on_response_to_esma_consultation~3182592790.en.pdf

This input has been complemented with, at times confidential, quantitative and qualitative input from financial markets participants.

- **Impact assessment**

The Commission conducted an impact assessment of relevant policy alternatives. Policy options were identified based on the following four drivers: (i) complex, lengthy and burdensome procedures, (ii) limited participation in EU CCPs and concentration in incumbent CCPs, (iii) interconnectedness of the EU financial system, (iv) inefficient framework for supervisory cooperation. The policy options were assessed against the specific objectives of improving the attractiveness of EU CCPs, encouraging clearing in EU CCPs and enhancing the assessment and management of cross-border risks.

The Impact Assessment received a positive opinion with comments by the Regulatory Scrutiny Board[21] on 14 September 2022 which made the following main recommendations for improvements:

- explain what success would look like and how it will be effectively monitored;
- make the range of options considered more comprehensive;
- bring out the rationale behind, and the envisaged design of, key measures to be dealt with through implementing regulation and clarify the criteria and parameters that will frame their development.

The requested clarifications were added in the relevant sections of the Impact Assessment.

Based on the assessment and comparison of all policy options, the Impact Assessment concluded on the following preferred policy options:

- **Measures to improve the attractiveness of EU CCPs**: a combination of measures simplifying the procedures for launching products and changing models as well as introducing an ex-post approval/non-objection procedure for certain changes was identified as the preferred option. These measures would simplify current procedures while preserving financial stability. Simplifying the procedures for launching products and changing models as well as introducing an ex-post/non-objection approval/review for certain changes were also assessed as separate options. However, as they would individually only partially meet the objectives, a combination of both options was deemed most appropriate to meet the outlined objectives.
- **Measures to encourage central clearing in the EU to safeguard financial stability**: a combination of different options was considered most appropriate to meet the objectives, which would include the following aspects: i) requiring clearing members and clients to hold an active account at EU CCPs; ii) ensuring compliance with the new requirements on clearing activities; iii) encouraging public entities that clear voluntarily through a CCP to do so in the EU via a Communication; and iv) facilitating central clearing. Combining these options would allow to address excessive reliance on Tier 2 CCPs, increase central clearing in the EU and remove obstacles to central clearing. Some of these measures may entail level 2 acts setting out the specific aspects. The

[21] Add link to positive RSB opinion

policy options have also been assessed separately but a combination of the options was considered most effective to meet the objectives.

- **Measures to enhance the assessment and management of cross-border risks**: targeted amendments to the current supervisory framework were deemed most appropriate and proportionate as they attain the right balance between achieving the following objectives: (i) strengthen the framework for robust consideration of cross-border risks, (ii) enhance EU financial stability, and (iii) improve the attractiveness of EU CCPs, while acknowledging that resolution decisions impacting CCPs, clearing members and clients are taken at national level and Member States remain ultimately responsible for supporting financially CCPs authorised in their jurisdiction.
- The overall package of options will have a positive effect on the post-trading landscape in the EU by improving the attractiveness of EU CCPs, encouraging central clearing in the EU, enhancing the assessment and management of cross-border risk and thus contributing to the competitiveness of the EU financial markets as well as EU financial stability.

- **Regulatory fitness and simplification**

The initiative aims to enhance the attractiveness of EU CCPs, reduce the excessive reliance of EU market participants on non-EU CCPs, safeguard EU financial stability and enhance the EU's open strategic autnomy. As such, it does not aim at reducing costs per se. However, the preferred policy option to increase EU CCPs' attractiveness will lead to a simplification of procedures for EU CCPs, reducing administrative burdens and making their operations more efficient, thus also bringing about a reduction of costs. The approximate range of these cost savings has been estimated based on interactions with stakeholders and several assumptions which were needed to extrapolate the effects to the whole EU. This cost saving is of administrative nature and thus counts under the "one in, one out" approach as an "out" in the range of approx. EUR 5 million to EUR 15 million (EU total). This is likely to be concentrated in few EU CCPs (as few EU CCPs might bring new products to the market in a given year) and is likely to be beneficial in terms of their attractiveness. As regards potential additional costs relevant for "one in one out", i.e. very limited paperwork related to opening an account with a CCP, the administrative costs are negligible (for more details, see Annex 3 of the accompanying Impact Assessment)

As regards the active account requirement, based on estimates of the Commission services on the basis on confidential information, roughly 60% of the EU clients of EU clearing members already have an account for clearing interest rate swaps at an EU CCP, and roughly 85% have one for credit default swaps. Thus, for these clients opening an account at an EU CCP for these types of products would not be an additional cost. In addition, any cost could depend on which CCP they participate in: according to confidential information provided to the Commission services, in some EU CCPs, for example, the costs of an account per se are zero under certain conditions. The active account requirement will be further specified in an RTS to be prepared by ESMA, which will be subject to a public consultation and a cost benefit analysis.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, this proposal respects these rights, in particular the economic rights, as listed in the main United Nations conventions on human

rights, the Charter of Fundamental Rights of the European Union which is an integral part of the EU Treaties, and the European Convention on Human Rights.

4. BUDGETARY IMPLICATIONS

The proposal will have no implications for the budget of the Union.

This legislative initiative will have no impact on expenditures for ESMA or other bodies of the European Union.

The impact assessment identified only moderate additional costs for ESMA, while at the same time the proposed measures create efficiencies that will lead to cost reductions. In addition, some provisions clarify and recalibrate the role of ESMA whilst not constituting new tasks and are therefore to be considered budget neutral.

Costs identified relate to the setting up and operation of a new central database, i.e. an IT tool for the submission of supervisory documents. However, even though ESMA might incur higher costs related to developing or choosing such a new IT tool as well as operating it, this IT tool will also create efficiencies and ESMA will benefit from those. These efficiencies relate to considerably less manual work in the reconciliation and sharing of documents, the following up on deadlines and questions as well as coordination with national competent authorities (NCAs), the college and the CCP Supervisory Committee. These benefits are likely to outweigh the costs incurred.

Furthermore, initial additional (paper-)work related to the modification of tools and procedures, as well as to enhanced cooperation, may increase costs at first, but these are likely to be reduced, or remain stable, over time. Notably, ESMA will be required to draft regulatory / implementing technical standards (RTS/ITS) on the format and content of the documents CCPs are required to submit to supervisory authorities when submitting an application, on standards for reporting on clearing activity and exposure to non-EU CCPs and the specification of the requirement for clearing members and clients to have an active account at a Union CCP, as well as a few reports, including the annual report on the results of their monitoring activity and cross-border activities and the bi-annual report on non-financial counterparties' clearing activities. In undertaking those activities, ESMA can build on already existing internal processes and procedures, and it may convert, where relevant, those procedures into RTSs/ITSs. In defining the active account requirement for some already identified instruments, and their ongoing monitoring, ESMA can take into account the work it has undertaken under Article 25(2c) of EMIR when assessing which Tier 2 CCPs' clearing services are of substantial systemic importance to the Union or one or more of its Member States and might therefore only require some very limited additional resources.

Another category to be considered in the cost analysis is the modification of procedures and tools to the new supervisory cooperation framework. The cooperation in joint supervisory teams and the establishment of a joint monitoring mechanism at EU level are new elements in the supervisory framework. However, they are mainly tools to improve the cooperation between authorities and cover tasks that are already, in all essential parts, performed by the authorities, except for the monitoring of the implementation of the requirements set out for active accounts at EU CCPs, such as fees for access charged by CCPs to clients for active accounts. These new structures will likely require some reorganisation of resources and potentially create the need for additional meetings but will not have substantial budgetary implications. Moreover, the recalibrated supervisory process also comes with benefits,

notably clearer responsibilities, avoiding unnecessary duplicative work and less work due to the introduction of non-objection procedures which enable ESMA and NCAs to focus on the material aspects of supervision in relation to the extension of central clearing services and changes to CCPs' risk models.

The proposed change clarifying that ESMA can withdraw the recognition of third-country CCPs that refuse to pay fees to ESMA will be positive in terms of costs. This avoids ESMA having to invest a considerable amount of work without getting remunerated for it.

In addition, further provisions are introduced which clarify and recalibrate the role of ESMA and are therefore to be considered budget neutral. For instance, ESMA already has the obligation to issue opinions before NCAs adopt certain decisions, however the content of those opinions is recalibrated to ensure a higher degree of efficiency in the supervisory process and ESMA is given a formal opportunity to issue an opinion on CCPs' annual review and evaluation as well as on the withdrawal of their authorisation and margin requirements. In addition, ESMA is to take a clear role in coordinating and providing recommendations in emergency situations. These are tasks that, in all material respects, relate to their already existing ongoing work and the provisions clarify and therefore strengthen ESMA's position, providing clear responsibilities.

Even though smaller changes to the role of other European Union bodies, such as the European Commission or the European Central Bank, are introduced, they will not have budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The measures aim at improving the attractiveness of EU CCPs and enhancing the supervision of cross-border risks in the EU. As such, several changes to EMIR are considered and, in some cases, amendments to other pieces of EU legislation. The proposal ensures that the relevant EU bodies can access the relevant information, while not giving rise to undue costs. The proposal includes a provision that an evaluation of EMIR in its entirety should be carried out, with a focus on its effectiveness and efficiency in meeting its original aims (i.e. improving the efficiency and safety of EU clearing markets and preserving financial stability). The evaluation should consider all aspects of EMIR, but especially improved attractiveness of EU CCPs. In principle, this evaluation should take place at least 5 years after the Regulation enters into and would seek to collect input from all relevant stakeholders.

- **Detailed explanation of the specific provisions of the proposal**

Detailed explanation of the specific provisions of the proposal

1. Intragroup transactions

EMIR provides for a framework exempting intragroup transactions (domestically and cross-border) from the clearing obligation under Article 4 and the margin requirements under Article 11 of that Regulation. In order to provide more legal certainty and predictability concerning the framework for intragroup decisions, the need for an equivalence decision is replaced by a list of jurisdictions for which an exemption cannot be granted. Article 3 should therefore be amended to replace the need for an equivalence decision with a list of third countries for which an exemption should not be granted and Article 13 should be deleted. These third countries should be those that are listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing,

in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council, and those listed in Annex I of the Union list of non-cooperative jurisdictions for tax purposes. The Commission is also empowered to adopt delegated acts to identify the third countries whose entities may not benefit from those exemptions despite not being identified in those lists, as being an entity from a third country identified in those lists is not necessarily the only factor that can influence risk, including counterparty risk or legal risk, associated with derivative contracts.

2. Clearing obligation

Article 4 is amended to introduce an exemption from the clearing obligation where an EU financial counterparty or a non-financial counterparty, subject to the clearing obligation under EMIR, enters into a transaction with a pension scheme arrangement established in a third country which is exempted from the clearing obligation under its national law.

3. Clearing obligation for financial counterparties

Article 4a is amended and as a result, when calculating the position towards the thresholds under Articles 4a of EMIR, only those derivative contracts that are not cleared at a CCP authorised under Article 14 or recognised under Article 25 of that Regulation should be included in that calculation.

4. Active account

A new Article 7a is introduced in order to address the risks associated with excessive exposures of EU clearing members and clients to third-country CCPs that provide clearing services identified as of substantial systemic importance by ESMA, and thereby ensure the integrity and stability of the EU financial system. This article requires financial counterparties and non-financial counterparties that are subject to the clearing obligation, to hold active accounts, directly or indirectly, at CCPs established in the EU, to clear at least a certain proportion of the services identified as of substantial systemic importance at EU CCPs, and to report on that. This requirement should lead to a reduction of excessive exposures in substantially systemic clearing services offered by the relevant Tier 2 CCPs, to the extent necessary to safeguard financial stability. ESMA, in cooperation with EBA, EIOPA and the ESRB and after consulting the ESCB, shall establish the details of the calibration of the activity to be maintained in these active accounts and the reporting requirements of transactions cleared at such active accounts. The Commission is empowered, where ESMA undertakes an assessment pursuant to Article 25(2c), to adopt a delegated act to amend the list of categories of derivative contracts which are subject to the active account requirement by adding or removing categories from that list.

5. Information on clearing services

A new Article 7b is introduced to require clearing members and clients that provide clearing services, to inform their clients about the possibility to clear a relevant contract at an EU CCP.

Article 7b also introduces an obligation for EU clearing members and EU clients to report to their competent authority the scope of clearing undertaken at non-EU CCPs. To ensure that the information to be submitted is specified and provided in a harmonised manner, ESMA is required to develop draft regulatory and implementing technical standards specifying the required information.

6. Reporting obligation

Article 9 is amended to remove the exemption from reporting requirements for transactions between counterparties within a group, where at least one of the counterparties is a non-financial counterparty, in order to ensure visibility on intra-group transactions.

7. Clearing obligation for non-financial counterparties

Article 10 is amended to require ESMA to review and clarify, where appropriate, the regulatory technical standards relating to the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks, the so-called hedging exemption, and the designation of thresholds in order to properly and accurately reflect the risks and characteristics in derivatives, and to consider whether the classes of OTC derivatives, namely interest rate, foreign exchange, credit and equity derivatives, are still the relevant classes. ESMA is encouraged to consider and provide, amongst others, more granularity for commodity derivatives.

Article 10 is also amended to require, when calculating the positions towards the thresholds, that only those derivative contracts that are not cleared at a CCP authorised under Article 14 or recognised under Article 25 should be included in that calculation.

8. Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP

Article 11 is amended to provide non-financial counterparties that become subject for the first time to the obligation to exchange collateral for OTC derivative contracts not cleared by a CCP, with an implementation period of 4 months in order to negotiate and test the arrangements to exchange collateral.

EBA may issue guidelines or recommendations to ensure a uniform application of the risk-management procedures in cooperation with the other ESAs.

9. Authorisation of a CCP and extension of activities and services

Articles 14 and 15 are amended to clarify that authorised CCPs should also be able to be authorised to provide clearing services and activities in non-financial instruments, in addition to their authorisation to provide clearing services and activities in financial instruments.

10. Authorisation of a CCP, extension of activities and services and procedure for granting and refusing authorisation

Articles 14, 15 and 17 are amended in order to ensure the relevant procedures for CCPs to expand their product offer are shorter, less complex and more certain in their outcome for EU CCPs. The competent authorities are required to swiftly acknowledge receipt of the application assessing whether the documents required for the authorisation or extension have been provided by the CCP. To ensure that EU CCPs submit all required documents with their applications, ESMA is required to develop draft regulatory and implementing technical standards specifying such documents, their format and content. In addition, the CCP should submit all documents to a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Furthermore, the CCP's competent authority, ESMA and the college, during a predefined assessment period, should interact with each other and ask the CCP questions to ensure a flexible and cooperative process.

11. Non-objection and ex-post procedures for granting a request fo extension of activities or services

A new Article 17a is introduced to provide CCPs with the possibility to undergo a non-objection procedure, instead of a regular procedure, for the authorisation of additional

services or activities a CCP intends to offer which do not increase the risks for the CCP. Article 17a states which additional services and activities are considered non-material and are therefore to be approved through such a non-objection procedure by that CCP's competent authority and for which the CCP may start to offer before the decision is received by the CCP's competent authority. Apart from these cases, a CCP may also ask its competent authority for the non-objection procedure to apply where it considers that the proposed additional service or activity would not increase its risks.

12. Procedure for seeking the opinion from ESMA and the college

A new Article 17b is introduced in order to clarify the scope and process to be followed where a competent authority seeks the opinion of ESMA and the college before adopting a supervisory decision for which the CCP does not submit an application, e.g. regarding a CCP's compliance with requirements on record-keeping or conflicts of interests.

13. College and opinion of the college

Articles 18 and 19 are amended to further foster a cooperative supervision of CCPs on an ongoing basis. The college is therefore requested to also issue an opinion where a competent authority considers withdrawing a CCP's authorisation as well as when a competent authority conducts the annual review and evaluation of that CCP. ESMA should manage and chair the college for each EU CCP and be granted the right to vote.

14. Withdrawal of authorisation

Article 20 is amended to require the competent authority to consult ESMA and the members of the college before the CCP's competent authority takes a decision to withdraw, or restrict the scope of, a particular service or activity , except where a decision is required urgently.

15. Annual review

Article 21 is amended to indicate that the annual review should consider the services or activities the CCP provides or the model changes the CCP uses based on a non-objection procedure. Also, the frequency of the report resulting from the review is further specified (the report should be delivered, at least, on a yearly basis on a given date). Moreover, it is specified that the report is subject to the opinion by ESMA and the college.

16. Supervisory cooperation between competent authorities and ESMA with regards to authorised CCPs and procedure for granting and refusing authorisation

Articles 17 and 23a are amended in order to enable ESMA to issue an opinion to the CCP's competent authority also in relation to a CCP's annual review and evaluation, margin requirements and the withdrawal of its authorisation. When issuing such an opinion, ESMA is to assess the CCP's compliance with the relevant EMIR requirements, focusing in particular on identified cross-border risks or risks to EU financial stability.

Moreover, ESMA should publish the fact that a competent authority does not comply or does not intend to comply with its opinion or the opinion of the college or with any conditions or recommendations included therein. ESMA can also publish the reasons for non-compliance provided by the competent authority.

Article 23a is amended to further specify the role of ESMA in strengthening the coordination in emergency situations and assessing risks, in particular on a cross-border basis.

17. Joint Supervisory Teams, non-objection procedures for granting a request of extension of activities or services and review and evaluation

A new Article 23b is introduced in order to increase the cooperation of the authorities involved in the supervision of authorised EU CCPs by establishing joint supervisory teams. The tasks of joint supervisory teams include: (i) to provide input to the CCP's competent authority within the context of the non-objection procedure for extending a CCP's existing authorisation, (ii) to assist in establishing the frequency and depth of a CCP's review and evaluation and (iii) to participate to on-site inspections.

18. Joint Monitoring Mechanism

A new Article 23c is introduced in order to establish a cross-sectoral monitoring mechanism bringing together Union bodies involved in the supervision of EU CCPs, clearing members and clients. ESMA, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, is to submit an annual report to the European Parliament, the Council and the Commission on the results of the monitoring activity in order to inform future policy decisions. ESMA may also issue guidelines or recommendations if it considers that competent authorities fail to ensure clearing members' and clients' compliance with the active account requirement or it identifies a risk to the EU financial stability.

19. Emergency situation

Article 24 is amended to further enhance the role of ESMA in an emergency situation by enabling ESMA 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. ESMA is also empowered to ask, by simple request, information from market participants in order to perform its coordination function in these cases. ESMA may also issue recommendations directed to the CCP's competent authorities.

20. CCP Supervisory Committee

Article 24a is amended in order for ESMA to map and identify the supervisory priorities, to consider cross-border risks including interconnections, interlinkages and concentration risks. In addition, Article 24a is amended to allow central banks of issue to attend all meetings of the CCP Supervisory Committee for EU CCPs and for the relevant authorities for clients and EU bodies to be invited, where appropriate.

21. Recognition of a third-country CCP

Article 25 is amended to clarify that where ESMA undertakes a review of a third-country CCP's recognition, that CCP should not be obliged to submit a new application but should provide ESMA with all information necessary for such review.

Article 25 is amended to introduce the possibility for the Commission, where in the interests of the Union, to take a proportionate approach and waive the requirement for a third country to have an effective equivalent system for the recognition of third-country CCPs when adopting an equivalence decision for that third-country.

To ensure that cooperation arrangements are proportionate, ESMA should tailor them to different jurisdictions based on the CCP(s) established in the respective jurisdiction. For Tier 2 CCPs the cooperation arrangements should cover a broader range of information to be exchanged between ESMA and the relevant third-country authorities and with an increased frequency.

Article 25 is further amended in order for cooperation arrangements to include the right for ESMA to also be informed where a Tier 2 CCP is required to enhance its preparedness in financial distress, by, for example, establishing a recovery plan or where an authority in such a third country establishes resolution plans. ESMA is also to be informed of the aspects relevant for the financial stability of the EU in relation to emerging crisis.

22. Ongoing compliance with the conditions for recognition

Article 25b is amended to clarify that Tier 2 CCPs are to provide ESMA with information on a regular basis.

23. Withdrawing of recognition and public notice

Article 25p and 25r are amended to clarify that ESMA can withdraw the recognition where a non-EU CCP infringes any of the requirements under EMIR and can issue a public notice where fees are not paid or where a CCP has not taken a remedial action requested by ESMA.

24. Information to competent authorities

Article 31 on the notification on changes to the management of a CCP is amended to clarify the procedure in relation to the sharing of information and issuing ESMA and college opinions.

25. ESMA and college opinions

Articles 32, 35, 41 and 54 are amended to clarify the requests for ESMA and college opinions.

26. Participation requirements and general provisions regarding organisational requirements

Articles 26 and 37 are amended to clarify that CCPs should not be allowed to be clearing members of other CCPs nor accept to have other CCPs or clearinghouses as clearing members or indirect clearing members.

27. Participation requirements

Article 37 is amended to set out that where a CCP has on-boarded or intends to on-board non-financial counterparties as clearing members, that CCP should ensure that certain additional requirements on margin requirements and default funds are met. Non-financial counterparties should not be permitted to offer client clearing services and only be allowed to keep accounts at the CCP for assets and positions held for their own account. The competent authority for the CCP should report to ESMA and the college on a regular basis on the appropriateness of accepting non-financial counterparties as clearing members. ESMA is mandated to prepare a draft RTS on the elements to be considered when determining the access criteria and might issue an opinion on the appropriateness of such arrangements following an ad-hoc peer review.

28. Transparency

Article 38 is amended in order to ensure that clients and indirect clients have better visibility and predictability of margin calls. Clearing members and clients providing clearing services should ensure transparency towards their clients.

29. Margin requirements

Article 41 is amended to ensure that CCPs continuously revise the level of their margins while taking into account any potentially procyclical effects of such revisions, reflecting current market conditions and considering the potential impact of their intraday margin collections and payments on the liquidity position of their participants.

30. Liquidity risk controls

Article 44 is amended to better reflect the entities whose default could materially affect a CCP's liquidity position by requiring a CCP to take into account the liquidity risk generated by the default of at least two entities, including clearing members and liquidity service providers

31. Collateral requirements

Article 46 is amended to allow bank guarantees and public guarantees to be considered eligible as highly liquid collateral provided that they are unconditionally available upon request within the liquidation period and making sure a CCP takes them into account when calculating its overall exposure to the bank. Furthermore, a CCP should take into account any potential procyclical effects when revising the level of the haircuts it applies to the assets it accepts as collateral.

32. Review of models, stress testing and back testing

Article 49 is amended in order to ensure the relevant procedures for CCPs to apply model changes are shorter, less complex and more certain in their outcome. The competent authorities are required to swiftly acknowledge receipt of the application for the model change by assessing whether the documents required have been provided by the CCP. To ensure that EU CCPs submit all required documents with their applications, ESMA is required to develop draft regulatory and implementing technical standards specifying such documents, their format and content. In addition, the CCP should submit all documents to a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Article 49 also introduces the possibility to undergo a non-objection procedure, instead of a regular procedure, for the validation of model changes considered not significant and specifies which changes are considered significant. Where a CCP considers the change as non-significant it may start to use the model change before the decision is received by the CCP's competent authority.

33. Amendments to the Reports and Review

Article 85 is amended to require the Commission to submit by [5 years after the entry into force of this Regulation] a report assessing the application of this Regulation. The Commission is required to submit that report to the European Parliament and to the Council, together with any appropriate proposals. In addition, the current requirement to deliver a report by 2 January 2023 is removed. ESMA is also required to submit a report by [3 years after the entry into force of this Regulation] on its staffing and resources.

34. Amendments to the Capital Requirements Regulation (CRR)

Article 382(4) of the CRR[22] is amended in order to align relevant provisions in the CRR with the changes suggested in this proposal. The amendment adjusts the scope of the own funds requirement for credit valuation adjustment risk, notably by clarifying which intragroup transactions can be excluded from that requirement.

35. Amendments to the Money Market Funds Regulation (MMFR)

Article 17 of the MMFR[23] is amended regarding the provisions on investment policy regarding counterparty risk limits. It excludes centrally cleared derivative transactions from the counterparty risk limits set out in Article 17(4) and 17(6)(c) of the MMFR. Furthermore, a definition of a CCP is added in Article 2, specifically as a new point (24).

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22 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance; OJ L 176, 27.6.2013, p. 1–337.

23 Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (Text with EEA relevance.); OJ L 169, 30.6.2017, p. 8–45.

2022/0403 (COD)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[24],

Having regard to the opinion of the European Economic and Social Committee[25],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) No 648/2012 of the European Parliament and of the Council[26] contributes to the reduction of systemic risk by increasing the transparency of over-the-counter (OTC) derivatives market and by reducing the counterparty credit and operational risks associated with OTC derivatives.

(2) Post-trade infrastructures are a fundamental aspect of the Capital Markets Union and are responsible for a range of post-trade processes, including clearing. An efficient and competitive clearing system in the Union is essential for the functioning of Union capital markets and is a cornerstone of the Union's financial stability. It is therefore necessary to lay down further rules to improve the efficiency of clearing services in the Union in general, and of central counterparties (CCPs) in particular, by streamlining procedures, especially for the provision of additional services or activities and for changing CCPs' risk models, by increasing liquidity, by encouraging clearing at Union CCPs, by modernising the framework under which CCPs operate, and by providing the necessary flexibility to CCPs and other financial actors to compete within the single market.

(3) To attract business, CCPs must be safe and resilient. Regulation (EU) No 648/2012 lays down measures to increase the transparency of derivatives markets and mitigate

[24] […]

[25] […]

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

risks through clearing and the exchange of margin. In that respect, CCPs play an important role in mitigating financial risks. Rules should therefore be laid down to further enhance the stability of Union CCPs, notably by amending certain aspects of the regulatory framework. In addition, and in recognition of Union CCPs' role in preserving the Union's financial stability, it is necessary to strengthen further their supervision, with particular attention to their role within the broader financial system and the fact they provide services across borders.

(4) Central clearing is a global business and Union market participants are active internationally. However, since the Commission adopted the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs in 2017[27], concerns have been expressed repeatedly, including by the European Securities and Markets Authority (ESMA)[28], about the ongoing risks to the Union financial stability arising from the excessive concentration of clearing in some third-country CCPs, in particular due to the potential risks that can arise in a stress scenario. In the short-term, to mitigate the risk of cliff edge effects related to the withdrawal of the UK from the Union due to an abrupt disruption of Union market participants' access to UK CCPs, the Commission adopted a series of equivalence decisions to maintain access to UK CCPs. However, the Commission called on Union market participants to reduce their excessive exposures to systemic CCPs outside the Union in the medium term. The Commission reiterated that call in its communication "The European economic and financial system: fostering openness, strength and resilience"[29] in January 2021. The risks and effects of excessive exposures to systemic CCPs outside the Union were considered in the report published by ESMA in December 2021[30] following an assessment conducted in accordance with Article 25(2c) of Regulation (EU) No 648/2012. That report concluded that some services provided by those systemically important UK CCPs were of such substantial systemic importance that the current arrangements under Regulation (EU) No 648/2012 were insufficient to manage the risks to the Union financial stability. To mitigate the potential financial stability risks to the Union due to the continued excessive reliance on systemic third-country CCPs, but also to enhance the proportionality of measures for those third-country CCPs that present less risks for the financial stability of the Union, it is necessary to further tailor the framework introduced by Regulation (EU) 2019/2099 to the risks presented by different third-country CCPs.

(5) Article 4(2) and Article 11(5) to (10) of Regulation (EU) No 648/2012 exempt intragroup transactions from the clearing obligation and the margin requirements. To provide more legal certainty and predictability concerning the framework for

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27 COM(2017)331.

28 ESMA Report "Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd", 16 December 2021, ESMA91-372-1945.

29 Communication from the Commission of 19 January 2021 to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: "The European economic and financial system: fostering openness, strength and resilience" (COM(2021) 32 final).

30 ESMA Report "Assessment report under Article 25(2c) of EMIR - Assessment of LCH Ltd and ICE Clear Europe Ltd", 16 December 2021, ESMA91-372-1945.

intragroup transactions, the equivalence decisions in Article 13 of that Regulation should be replaced by a simpler framework. Article 3 of that Regulation should therefore be amended to replace the need for an equivalence decision with a list of third countries for which an exemption should not be granted. Consequently, Article 13 of that Regulation should be deleted. Since Article 382 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[31] refers to intragroup transactions as provided for in Article 3 of Regulation (EU) No 648/2012, that Article 382 should also be amended accordingly.

(6) Given the fact that entities that are established in countries that are listed as high-risk third countries that have strategic deficiencies in their regime on anti-money laundering and counter terrorist financing, as referred to in Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[32], or in third countries that are listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[33] are subject to a less stringent regulatory environment, their operations may increase the risk, including due to increased counterparty credit risk and legal risk, for the Union financial stability. Consequently, such entities should not be eligible to be considered in the framework of intragroup transactions.

(7) Strategic deficiencies in the regime on anti-money laundering and counter terrorist financing, or lack of cooperation for tax purposes are not necessarily the only factors that can influence risk, including counterparty credit risk and legal risk, associated with derivative contracts. Other factors, such as the supervisory framework, also play a role. The Commission should therefore be empowered to adopt delegated acts to identify the third countries whose entities may not benefit from those exemptions despite not being identified in those lists. Considering that intragroup transactions benefit from reduced regulatory requirements, regulators and supervisors should carefully monitor and assess the risks associated with transactions involving entities from third countries.

(8) To ensure a level playing field between Union and third-country credit institutions offering clearing services to pension scheme arrangements, an exemption from the clearing obligation under Article 4, point (iv), of Regulation (EU) No 648/2012 should be introduced where a Union financial counterparty or a non-financial counterparty that is subject to the clearing obligation enters into a transaction with a pension scheme arrangement established in a third country which is exempted from the clearing obligation under that third country's national law.

(9) Regulation (EU) No 648/2012 promotes the use of central clearing as the main risk-mitigation technique for OTC derivatives. The risks associated with an OTC derivative contract are therefore best mitigated when that derivative contract is cleared by a CCP

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

32 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

33 Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 413 I, 12.10.2021, p. 1).

authorised under Article 14 or recognised under Article 25 of that Regulation. It follows that in the calculation of the position that is compared to the thresholds specified pursuant to Article 10(4), point (b), of Regulation (EU) No 648/2012, only those derivative contracts that are not cleared by a CCP authorised under Article 14 or recognised under Article 25 of that Regulation should be includedin that calculation.

(10) It is necessary to address the financial stability risks associated with excessive exposures of Union clearing members and clients to systemically important third-country CCPs (Tier 2 CCPs) that provide clearing services that have been identified by ESMA as clearing services of substantial systemic importance pursuant to Article 25(2c) of Regulation (EU) No 648/2012. In December 2021, ESMA concluded that the provision of certain clearing services provided by two Tier 2 CCPs, namely for interest rate derivatives denominated in euro and Polish zloty, Credit Default Swaps (CDS) denominated in euro and Short-Term Interest Rate Derivatives (STIR) denominated in euro, are of substantial systemic importance for the Union or one or more of its Member States. As noted by ESMA in its December 2021 assessment report, were those Tier 2 CCPs to face financial distress, changes to those CCPs' eligible collateral, margins or haircuts may negatively impact the sovereign bond markets of one or more Member States, and more broadly the Union financial stability. Furthermore, disruptions in markets relevant for monetary policy implementation may hamper the transmission mechanism critical to central banks of issue. It is therefore appropriate to require any financial counterparties and non-financial counterparties that are subject to the clearing obligation to hold, directly or indirectly, accounts with a minimum level of activity at CCPs established in the Union. That requirement should reduce the provision of those clearing services by those Tier 2 CCPs to a level where such clearing is no longer of substantial systemic importance.

(11) It is necessary to ensure that the calibration of the level of the clearing activity to be maintained in accounts at Union CCPs can be adapted to changing circumstances. ESMA has an important role in the assessment of the substantial systemic importance of third-country CCPs and their clearing services. ESMA, in cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the ESRB, and after having consulted the European System of Central Banks (ESCB), should therefore develop draft regulatory technical standards specifying the details of the level of substantially systemic clearing services to be maintained in the active accounts in Union CCPs by financial and non-financial counterparties subject to the clearing obligation. Such calibration should not go beyond what is necessary and proportionate to reduce clearing in the identified clearing services at Tier 2 CCPs concerned. In that regard, ESMA should consider the costs, risks and the burden such calibration entails for financial and non-financial counterparties, the impact on their competitiveness, and the risk that those costs are passed on to non-financial firms. Furthermore, ESMA should also ensure that the envisaged reduction in clearing in those instruments, identified as of substantial systemic importance, results in them no longer being considered of substantial systemic importance when ESMA reviews the recognition of the relevant CCPs which according to Article 25(5) of that Regulation and where such a review should be done at least every five years. In addition, suitable phase-in periods for the progressive implementation of the requirement to hold a certain level of the clearing activity in the accounts at Union CCPs should be foreseen.

(12) To ensure that clients are aware of their options and can take an informed decision as where to clear their derivative contracts, clearing members and clients that provide clearing services in both Union and recognised third-country CCPs should inform their clients about the option to clear a derivative contract in a Union CCP so that clearing in those services identified as of substantial systemic importance is reduced in Tier 2 CCPs in order to ensure the financial stability of the Union.

(13) To ensure that competent authorities have the necessary information on the clearing activities undertaken by clearing members or clients in recognised CCPs, a reporting obligation should be introduced for such clearing members or clients. The information to be reported should distinguish between securities transactions, derivative transactions traded on a regulated market and over-the-counter (OTC) derivatives transactions.

(14) Regulation (EU) 2019/834 of the European Parliament and of the Council[34] amended Regulation (EU) No 648/2012 to introduce, *inter alia*, an exemption from reporting requirements for OTC derivative transactions between counterparties within a group, where at least one of the counterparties is a non-financial counterparty. That exemption has been introduced because intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative transactions and are used primarily for internal hedging within groups. As such, those transactions do not significantly contribute to systemic risk and interconnectedness with the rest of the financial system. The exemption for those transactions from reporting requirements has, however, limited the ability of ESMA, the ESRB and other authorities to clearly identify and assess the risks taken by non-financial counterparties. To ensure more visibility on intragroup transactions, considering their potential interconnectedness with the rest of the financial system and taking into account recent market developments, in particular strains on energy markets as a result of Russia's unprovoked and unjustified aggression against Ukraine, that exemption should be removed.

(15) To ensure that competent authorities are at all times aware of exposures at entity and group level and are able to monitor such exposures, competent authorities should establish effective cooperation procedures to calculate the positions in contracts not cleared at an authorised or recognised CCP andto actively evaluate and assess the level of exposure in OTC derivative contracts at entity and group level.

(16) It is necessary to ensure that Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council[35] relating to the criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks continues to be appropriate in light of market developments. It is also necessary to ensure that the

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[34] Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).

[35] Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p.11).

clearing thresholds laid down in that Commission Delegated Regulation relating to values of those thresholds properly and accurately reflect the different risks and characteristics in derivatives, other than interest rate, foreign exchange, credit and equity derivatives. ESMA should therefore also review and clarify, where appropriate, that Commission Delegated Regulation and propose amending it if necessary. ESMA is encouraged to consider and provide, *inter alia*, more granularity for commodity derivatives. That granularity could be achieved by separating the clearing thresholds by sector and type, such as differentiating between agriculture, energy or metal related commodities or differentiating those commodities based on other features such as environmental, social and governance criteria, environmentally sustainable investments or crypto-related features. During the review, ESMA should endeavour to consult relevant stakeholders that have specific knowledge on particular commodities.

(17) Non-financial counterparties that have to exchange collateral for OTC derivative contracts not cleared by a CCP should have sufficient time to negotiate and test the arrangements to exchange such collateral.

(18) To ensure a uniform application of the risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral with respect to OTC derivative contracts entered into by financial counterparties and non-financial counterparties, the European Supervisory Authorities (ESAs) should take the necessary actions to ensure such uniform application.

(19) To ensure a consistent and convergent approach amongst competent authorities throughout the Union, authorised CCPs or legal persons that wish to be authorised under Article 14 of Regulation (EU) No 648/2012 to provide clearing services and activities in financial instruments should also be able to be authorised to provide clearing services and other activities in relation to non-financial instruments. Regulation (EU) No 648/2012 applies to CCPs as entities, and not to specific services, as set out in Article 1(2) of that Regulation. When a CCP clears non-financial instruments, in addition to financial instruments, the CCP's competent authority should be able to ensure that the CCP complies with all requirements of Regulation (EU) No 648/2012 for all services it offers.

(20) Union CCPs face challenges in expanding their product offer and experience difficulties in bringing new products to the market. Those challenges and difficulties can be explained by certain provisions of Regulation (EU) No 648/2012 that render some authorisation procedures too long, complex and uncertain in their outcome. The process of authorising Union CCPs or extending their authorisation should therefore be simplified, while ensuring the appropriate involvement of ESMA and the college referred to in Article 18 of Regulation (EU) No 648/2012. First, to avoid significant, and potentially indefinite, delays when competent authorities assess the completeness of an application for an authorisation, the competent authority should swiftly acknowledge receipt of that application and quickly verify whether the CCP has provided the documents required for the assessment. To ensure that Union CCPs submit all required documents with their applications, ESMA should develop draft regulatory and implementing technical standards specifying which documents should be provided, what information those documents should contain and in which format they should be submitted. Second, to ensure an efficient and concurrent assessment of applications, CCPs should be able to submit all documents via a central database where they should be shared instantaneously with the CCP's competent authority, ESMA and the college. Third, a CCP's competent authority, ESMA and the college should, during the assessment period, engage and ask the CCP any questions to ensure

a swift, flexible, and cooperative process for a comprehensive review. To avoid duplication and unnecessary delays, all questions and subsequent clarifications should also be shared simultaneously between the CCP's competent authority, ESMA and the college.

(21) There is currently uncertainty as to when an additional service or activity is covered by a CCP's existing authorisation. It is necessary to address that uncertainty and to ensure proportionality when the proposed additional service or activity does not increase the risks for the CCP. It is therefore necessary to lay down that applications in those cases should not undergo the full assessment procedure. For that reason, it should be specified which additional clearing services and activities are non-material, and thus do not increase the risks for a Union CCP, and should be approved through a non-objection procedure by that CCP's competent authority. That non-objection procedure should be applied where the CCP intends to clear one or more financial instruments belonging to the same classes of financial instruments for which it has been authorised to clear, provided such financial instruments are traded on a trading venue for which the CCP already provides clearing services or performs activities and the proposed additional clearing service or activity does not involve a payment in a new currency. That non-objection procedure should also be applied where the CCP adds a new Union currency in a class of financial instruments already covered by the CCP's authorisation, or where the CCP adds one or more additional tenors to a class of financial instruments already covered by the CCP's authorisation provided that the maturity range is not significantly extended. In addition, a CCP should also be able to ask its competent authority for the non-objection procedure to apply where that CCP considers that the proposed additional service or activity would not increase its risks, in particular where the new clearing service or activity is similar to the services the CCP is already authorised to provide. The non-objection procedure should not require a separate opinion from ESMA and the college since such requirement would be disproportionate. Instead, ESMA and the college should be able to provide input to the CCP's competent authority through the joint supervisory team established for that CCP.

(22) To foster a cooperative supervision of CCPs on an ongoing basis, the college should issue an opinion where a competent authority considers withdrawing a CCP's authorisation and when a competent authority conducts the annual review and evaluation of that CCP.

(23) To ensure the consistent functioning of all colleges and to further enhance supervisory convergence, ESMA should manage and chair the college for each Union CCP and should be granted the right to vote in that college.

(24) ESMA should be able to contribute more effectively to ensuring that Union CCPs are safe, robust and competitive in providing their services throughout the Union. Therefore, ESMA should, in addition to the supervisory competences currently laid down in Regulation (EU) No 648/2012, also issue an opinion to the CCP's competent authority about a CCP's annual review and evaluation, the withdrawal of its authorisation and margin requirements. When issuing an opinion, ESMA should assess a CCP's compliance with the applicable requirements, focusing in particular on identified cross-border risks or risks to the financial stability of the Union. It is also necessary to further enhance supervisory convergence and to ensure that all stakeholders are informed of ESMA's and the college's assessment of a CCP's activities. ESMA should therefore disclose, taking into account the need to protect confidential information, the fact that a competent authority does not comply or does

not intend to comply with its opinion or the opinion of the college and any conditions or recommendations included therein. ESMA should be able to decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with the ESMA opinion or the college opinion or any conditions or recommendations contained therein.

(25) It is necessary to ensure that the CCP complies with Regulation (EU) No 648/2012 on an ongoing basis, including after a non-objection procedure approving the provision of additional clearing services or activities, or after a non-objection procedure for the validation of a model change in which cases ESMA and the college do not issue a separate opinion. The review conducted by the competent authority of the CCP at least on an annual basis should therefore in particular consider such new clearing services or activities and any model changes. To ensure supervisory convergence and that Union CCPs are safe, robust and competitive in providing their services throughout the Union, the report of the competent authority should be subject to an opinion by ESMA and the college and should be submitted every year.

(26) ESMA should have the means to identify potential risks to the Union's financial stability. ESMA should therefore, in cooperation with the EBA, EIOPA, and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013[36], identify the interconnections and interdependencies between different CCPs and legal persons, including shared clearing members, clients and indirect clients, shared material service providers, shared material liquidity providers, cross-collateral arrangements, cross-default provisions and cross-CCP netting, cross-guarantee agreements and risks transfers and back-to-back trading arrangements.

(27) The central banks of issue of the Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee are non-voting members of that committee. They only participate to its meetings for Union CCPs in the context of discussions about the Union-wide assessments of the resilience of those CCPs to adverse market developments and relevant market developments. Contrary to their involvement in the supervision of third-country CCPs, central banks of issue are thus insufficiently involved on supervisory matters for Union CCPs that are of direct relevance to the conduct of monetary policy and the smooth operation of payments systems, which leads to insufficient consideration of cross-border risks. It is therefore appropriate that those central banks of issue are able to attend as non-voting members all meetings of the CCP Supervisory Committee when it convenes for Union CCPs.

(28) It is necessary to ensure a prompt exchange of information, knowledge sharing and effective cooperation between the authorities involved in the supervision of authorised CCPs, and in particular where a swift decision by a CCP's competent authority is required. It is therefore appropriate to set up a joint supervisory team for each Union CCP to assist those supervisory authorities, including by providing input to the CCP's competent authority within the context of the non-objection procedure for extending a CCP's existing authorisation, assisting in establishing the frequency and depth of a CCP's review and evaluation, and participating to on-site inspections. Considering that a CCP's competent authority remains ultimately responsible for the final supervisory

[36] […]

decisions, the joint supervisory teams should work under the auspices of the CCP's competent authority for which the team is established and should be composed of staff members from the CCP's competent authority, ESMA and certain members of the college. Other members of the college should also be able to request to participate justifying the request based on their assessment of the impact that the CCP's financial distress could have on the financial stability of their respective Member State.

(29) 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 it is necessary 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 involved in the supervision of 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 conferred upon it in accordance with Council Regulation (EU) No 1024/2013.

(30) 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. ESMA might institute a breach of Union law procedure pursuant to Article 17 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[37],where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA considers that competent authorities fail to ensure clearing members' and clients' compliance with the requirement to clear at least a proportion of identified contracts at accounts at Union CCPs, or where ESMA identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law. Before instituting such breach of Union law procedure, ESMA might issue guidelines and recommendations pursuant to Article 16 of that Regulation. Where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, ESMA considers that compliance with the requirement to clear at least a proportion of identified contracts at accounts at Union CCPs does not effectively ensure the reduction of Union clearing members' and clients' excessive exposure to Tier 2 CCPs, it should review and propose amending the relevant Commission Delegated Regulation specifying further that requirement, proposing to set, where necessary, an appropriate adaptation period.

(31) The 2020 market turmoil as a result of the Covid-19 pandemic and the 2022 high prices on energy wholesale markets following Russia's unprovoked and unjustified aggression against Ukraine showed that, while it is essential for competent authorities to cooperate and exchange information to address ensuing risks when events with

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

cross-border impacts emerge, ESMA still lacks the necessary tools to ensure such coordination and a convergent approach at Union level. ESMA should therefore 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.

(32) To reduce the burden on CCPs and ESMA, it should be clarified that where ESMA undertakes a review of a third-country CCP's recognition pursuant to Article 25(5), first subparagraph, point (b), that third-country CCP should not be obliged to submit a new application for recognition. It should, however, provide ESMA with all information necessary for such review. Consequently, ESMA's review of a third-country CCP's recognition should not constitute a new recognition of that CCP.

(33) The Commission should be able, when adopting an equivalence decision, to waive the requirement for that third country to have an effective equivalent system for the recognition of third-country CCPs. In considering where such an approach would be proportionate, the Commission might consider a range of different factors, including compliance with the Principles for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures and the International Organisation of Securities Commissions, the size of the third-country CCPs established in that jurisdiction and, where known, the expected activity in these third-country CCPs by clearing members and trading venues established in the Union.

(34) To ensure that cooperation arrangements between ESMA and the relevant competent authorities of third countries are proportionate, such arrangements should reflect the specific features of the scope of services provided, or intended to be provided, within the Union by CCPs authorised in that third-country and whether those services entail specific risks to the Union or to one or more of its Member States. The cooperation arrangements should therefore reflect the degree of risk that the CCPs established in a third country potentially present to the financial stability of the Union or of one or more of its Member States.

(35) ESMA should therefore tailor its cooperation arrangements to different third-country jurisdictions based on the CCPs established in the respective jurisdiction. In particular, Tier 1 CCPs cover a wide range of CCP profiles hence ESMA should ensure that a cooperation arrangement is proportionate to the CCPs established in each third-country jurisdiction. ESMA should consider, amongst others, the liquidity of the markets concerned, the degree to which the CCPs' clearing activities are denominated in euro or other Union currencies and the extent to which Union entities use the services of such CCPs. Considering that the vast majority of Tier 1 CCPs provide clearing services to a limited extent to clearing members and trading venues established in the Union, ESMA's scope of assessment and information to be requested should also be limited in all those jurisdictions. To limit information requests for Tier 1 CCPs, a pre-defined range of information should in principle be requested by ESMA annually. Where the risks from a Tier 1 CCP or jurisdiction are potentially greater, more, and at least quarterly, requests and a wider scope of information requested would be justified. However, any cooperation arrangements in place when this Regulation enters into force should not be required to be adjusted unless the relevant third-country authorities so request.

(36) Where recognition is provided under Article 25(2b) of Regulation (EU) No 648/2012, considering that those CCPs are of systemic importance for the Union or one or more of its Member States, the cooperation arrangements between ESMA and the relevant third-country authorities should cover the exchange of information for a broader range of information and with increased frequency. In that case, the cooperation arrangements should also entail procedures to ensure such a Tier 2 CCP is supervised pursuant to Article 25 of that Regulation. ESMA should ensure it can obtain all information necessary to fulfil its duties under that Regulation, including information necessary to ensure compliance with Article 25(2b) of that Regulation and to ensure that information is shared where a CCP has been granted, partially or fully, comparable compliance. To enable ESMA to carry out full and effective supervision of Tier 2 CCPs, it should be clarified that those CCPs should provide ESMA with information periodically.

(37) To ensure that ESMA is also informed about how a Tier 2 CCP is prepared for, can mitigate and recover from financial distress, the cooperation arrangements should include the right for ESMA to be informed where a Tier 2 CCP establishes a recovery plan or where a third-country authority establishes resolution plans. ESMA should also be informed on the aspects relevant for the financial stability of the Union, or of one or more of its Member States, and on how individual clearing members, and to the extent known clients and indirect clients, could be materially affected by the implementation of such a recovery or resolution plan. The cooperation arrangements should also indicate that ESMA should be informed when a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of the CCP, its clearing members, clients and indirect clients.

(38) To mitigate potential risks for the financial stability of the Union, or of one or more of its Member States, CCPs and clearing houses should not be allowed to be clearing members of other CCPs nor should CCPs be able to accept to have other CCPs as clearing members or indirect clearing members.

(39) The recent events on commodity markets as a result of Russia's unprovoked and unjustified aggression against Ukraine illustrate the fact that non-financial counterparties do not have the same access to liquidity as financial counterparties. Therefore, non-financial counterparties should not be allowed to offer client clearing services and should be only allowed to keep accounts at the CCP for assets and positions held for their own account. Where a CCP has or intends to accept non-financial counterparties as clearing members that CCP should ensure that the non-financial counterparties can fulfil the margin requirements and default funds contributions, including in stressed conditions. Considering non-financial counterparties are not subject to the same prudential requirements and liquidity safeguards as financial counterparties, their direct access to CCPs should be monitored by the competent authorities of CCPs accepting them as clearing members. . The competent authority for the CCP should report to ESMA and the college on a regular basis on the appropriateness of accepting non-financial counterparties as clearing members. ESMA might issue an opinion on the appropriateness of such arrangements following an ad-hoc peer review.

(40) To ensure clients and indirect clients have better visibility and predictability of margin calls, and thus further develop their liquidity management strategies, clearing members and clients providing clearing services should ensure transparency towards their clients. Due to their closer relationship with CCPs and their professional experience

with central clearing and liquidity management, clearing members are best placed to communicate in a clear and transparent manner to clients how CCP models work, including in stress events, and the implications such events can have on the margins clients are requested to post, including any additional margin clearing members themselves may ask. A better understanding of CCP margin models can improve clients' ability to reasonably predict margin calls and prepare themselves for collateral requests, particularly in stress events.

(41) To ensure that margin models reflect current market conditions, CCPs should continuously and not only regularly revise the level of their margins taking into account any potentially procyclical effects of such revisions. When calling and collecting margins on an intraday basis, CCPs should further consider the potential impact of their intraday margin collections and payments on the liquidity position of their participants.

(42) To ensure the liquidity risk is accurately defined, the entities whose default a CCP should take into account to determine such risk should be expanded to cover not only the default of clearing members but also of liquidity service providers, settlement service providers or any other service providers.

(43) To facilitate access to clearing to those entities that do not hold sufficient amounts of highly liquid assets and in particular energy companies, under conditions to be specified by ESMA and to ensure a CCP takes those conditions into account when calculating its overall exposure to a bank that is also a clearing member, commercial bank and public bank guarantees should be considered eligible collateral. In addition, given their low credit risk profile, it should be explicitly specified that public guarantees are also eligible as collateral. Finally, a CCP should, when revising the level of the haircuts it applies to the assets it accepts as collateral, take into account any potential procyclical effects of such revisions.

(44) To facilitate CCPs' ability to respond promptly to market developments that may require amendments to their risk models, the process of the validation of changes to such models should be simplified. Where a change is non-significant, a non-objection validation procedure should apply. To ensure supervisory convergence, Regulation (EU) No 648/2012 should specify the changes that should be considered as significant. This should be the case where certain conditions would be met referring to different aspects of the CCP's financial position and overall risk level.

(45) Regulation (EU) No 648/2012 should be reviewed no later than 5 years after the date of entry into force of this Regulation. This should allow time to apply the changes introduced by this Regulation. Whilst a review of Regulation (EU) No 648/2012 in its entirety should be carried out, that review should focus on the effectiveness and efficiency of that Regulation in meeting its aims, improving the efficiency and safety of Union clearing markets and preserving financial stability of the Union. The review should also consider the attractiveness of Union CCPs, the impact of this Regulation on encouraging clearing in the Union, and the extent to which the enhanced assessment and management of cross-border risks have benefited the Union.

(46) To ensure consistency of Regulation (EU) 2017/1131 of the European Parliament and of the Council[38] with Regulation (EU) No 648/2012 and to preserve the integrity and

[38] Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).

stability of the internal market, it is necessary to lay down in Regulation (EU) 2017/1131 a uniform set of rules to address counterparty risk in financial derivative transactions performed by money market funds (MMF), when the transactions have been cleared by a CCP that is authorised or recognised under Regulation (EU) No 648/2012. As central clearing arrangements mitigate counterparty risk that is inherent in financial derivative contracts, it is necessary to take into consideration whether a derivative has been centrally cleared by a CCP that is authorised or recognised under that Regulation, when determining the applicable counterparty risk limits. It is also necessary for regulatory and harmonisation purposes, to lift counterparty risk limits only where the counterparties use CCPs which are authorised or recognised in accordance with that Regulation, to provide clearing services to clearing members and their clients.

(47) To ensure consistent harmonisation of rules and supervisory practice on applications for authorisation, extension of authorisation and model validations the active account requirement and the CCP participation requirements, the Commission should be empowered to adopt regulatory technical standards developed by ESMA with regard to the following: the documents CCPs are required to submit when applying for authorisation, extension of authorisation and validation of model changes; the proportion of activity in the relevant derivative contracts that should be held in active accounts at Union CCPs and the calculation methodology to be used to calculate that proportion; the scope and details of the reporting by Union clearing members and clients to their competent authorities on their clearing activity in third-country CCPs and whilst providing the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives to also review the scope of the hedging exemption and thresholds for the clearing obligation to apply; and the elements to be considered when laying down the admission criteria to a CCP. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU) and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(48) To ensure uniform conditions for the implementation of this Regulation, the Commission should also be empowered to adopt implementing technical standards developed by ESMA with regard to the format of the required documents for applications and the format of the reporting by Union clearing members and clients to their competent authorities on their clearing activity in third-country CCPs. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

(49) To ensure the list of third countries whose entities may not benefit from those exemptions despite not being identified in those lists is relevant for the objectives of Regulation (EU) No 648/2012, to ensure the consistent harmonisation of the obligation to clear certain transactions in an account with an authorised CCP where ESMA undertakes an assessment pursuant to Article 25(2c) and to ensure the list of non-material changes for the non-objection procedure to apply remains relevant, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission to adjust the transactions in scope of the obligation and to change the list of non-material changes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in

the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[39]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts

(50) Since the objectives of this Regulation, namely to increase the safety and efficiency of Union CCPs by improving their attractiveness, encouraging clearing in the Union and enhancing the cross-border consideration of risks cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(51) Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 648/2012

Regulation (EU) No 648/2012 is amended as follows:

(1) Article 3 is replaced by the following:

'Article 3

Intragroup transactions

1. In relation to a non-financial counterparty, an intragroup transaction shall be an OTC derivative contract entered into with another counterparty which is part of the same group provided that both counterparties are included in the same consolidation on a full basis and they are subject to an appropriate centralised risk evaluation, measurement and control procedures and that counterparty is established in the Union or, if it is established in a third country that third country is not listed pursuant to paragraphs 4 and 5.

2. In relation to a financial counterparty, an intragroup transaction shall be any of the following:

(a) an OTC derivative contract entered into with another counterparty which is part of the same group, provided that all of the following conditions are met:

(a) the financial counterparty is established in the Union or, if it is established in a third country, that third country is not listed pursuant to paragraphs 4 and 5;

(b) the other counterparty is a financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements;

(c) both counterparties are included in the same consolidation on a full basis;

[39] OJ L 123, 12.5.2016, p. 1.

(d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(b) an OTC derivative contract entered into with another counterparty where both counterparties are part of the same institutional protection scheme, referred to in Article 113(7) of Regulation (EU) No 575/2013, provided that the condition set out in point (a)(ii) of this paragraph is met;

(c) an OTC derivative contract entered into between credit institutions affiliated to the same central body or between such credit institution and the central body, as referred to in Article 10(1) of Regulation (EU) No 575/2013;

(d) an OTC derivative contract entered into with a non-financial counterparty which is part of the same group, provided both the following conditions are met:

(a) both counterparties to the derivative contract are included in the same consolidation on a full basis and are subject to an appropriate centralised risk evaluation, measurement and appropriate control procedures;

(b) the non-financial counterparty is established in the Union or, if it is established in a third-country, that third country is not listed under paragraphs 4 and 5.

3. For the purposes of this Article, counterparties shall be considered included in the same consolidation when they are both any of the following:

(a) included in a consolidation in accordance with Directive 2013/34/EU or International Financial Reporting Standards (IFRS) adopted pursuant to Regulation (EC) No 1606/2002 or, in relation to a group the parent undertaking of which has its head office in a third country, in accordance with generally accepted accounting principles of a third country determined to be equivalent to IFRS in accordance with Regulation (EC) No 1569/2007 or accounting standards of a third country the use of which is permitted in accordance with Article 4 of that Regulation;

(b) covered by the same consolidated supervision in accordance with Directive 2013/36/EU or, in relation to a group the parent undertaking of which has its head office in a third country, the same consolidated supervision by a third-country competent authority verified as equivalent to that governed by the principles laid down in Article 127 of Directive 2013/36/EU.

4. For the purposes of this Article, transactions with counterparties established in any of the following third countries shall not benefit from any of the exemptions for intragroup transactions:

(a) where the third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[*1];

(b) where the third country is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes[*2] and their subsequent updates which are specifically approved twice a year, customarily in February and October, and published in series C of the *Official Journal of the European Union*.

5. Where appropriate in the light of the legal, supervisory and enforcement arrangements of a third country with regard to risks, including counterparty credit risk and legal risk, the Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation to identify the third countries whose entities may not benefit from any of the exemptions for intragroup transactions despite not being listed pursuant to paragraph 4.

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*1 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).'

*2 Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 413 I, 12.10.2021, p. 1).;

(2) in Article 4(1), the following subparagraph is added:

'The obligation to clear all OTC derivative contracts does not apply to contracts concluded in situations as referred to in the first subparagraph, point (a)(iv), between, on one side, a financial counterparty that meets the conditions set out in Article 4a(1), second subparagraph, or a non-financial counterparty that meets the conditions set out in Article 10(1), second subparagraph, and, on the other side, a pension scheme arrangement established in a third country and operating on a national basis, provided that such entity or arrangement is authorised, supervised and recognised under national law and where its primary purpose is to provide retirement benefits and is exempted from the clearing obligation under its national law.';

(3) in Article 4a(3), the first subparagraph is replaced by the following:

'In calculating the positions referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25, entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.';

(4) the following Articles 7a and 7b are inserted:

'Article 7a

Active Account

1. Financial counterparties or a non-financial counterparties that are subject to the clearing obligation in accordance with Articles 4a and 10 and clear any of the categories of the derivative contracts referred to in paragraph 2 shall clear at least a proportion of such contracts at accounts at CCPs authorised under Article 14.

2. The categories of derivative contracts subject to the obligation referred to in paragraph 1 shall be any of the following:

(a) interest rate derivatives denominated in euro and Polish zloty;

(b) Credit Default Swaps (CDS) denominated in euro;

(c) Short-Term Interest Rate Derivatives (STIR) denominated in euro.

3. A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall calculate its activities in the categories of derivative contracts referred to in paragraph 1 at CCPs authorised under Article 14.

4. A financial counterparty or a non-financial counterparty that is subject to the obligation set out in paragraph 1 shall report to the competent authority of the CCP or CCPs it uses the outcome of the calculation referred to in paragraph 2 on an annual basis, confirming their compliance with the obligation set out in that paragraph. The CCP's competent authority shall immediately transmit that information to ESMA and the Joint Monitoring Mechanism referred to in Article 23c.

5. ESMA shall, in cooperation with the EBA, EIOPA and ESRB and after consulting the ESCB, develop draft regulatory technical standards specifying:

(a) the proportion of activity in each category of the derivative contracts referred to in paragraph 2; that proportion shall be set at a level that results in a reduction in clearing in those derivative contracts at those Tier 2 CCPs offering services of substantial systemic importance for the financial stability of the Union or one or more of its Member States pursuant to Article 25(2c) and that ensures clearing in such derivative contracts is no longer of substantial systemic importance;

(b) the methodology for calculation under paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. Where ESMA undertakes an assessment pursuant to Article 25(2c) and concludes that certain services or activities provided by Tier 2 CCPs are of substantial systemic importance for the Union or one or more of its Member States or that services or activities that were previously identified by ESMA as being of substantial systemic importance for the Union or one or more of its Member States no longer are, the Commission is empowered to adopt a delegated act to amend paragraph 2 accordingly, in accordance with Article 82.

Article 7b

Information on clearing services

1. Clearing members and clients that provide clearing services both at a CCP authorised under Article 14 and at a CCP recognised under Article 25 shall, when one of their clients submits a contract for clearing, inform that client about the possibility to clear such contract at the CCP authorised under Article 14.

2. Clearing members and clients that are established in the Union or are part of a group subject to consolidated supervision in the Union and that clear in a CCP recognised under Article 25, shall report to their competent authority the scope of their clearing activity in such CCP on an annual basis, specifying all of the following:

(a) the type of financial instruments or non-financial contracts cleared;

(b) the average values cleared over 1 year per Union currency and per asset class;

(c) the amount of margins collected;

(d) the default fund contributions

(e) the largest payment obligation.

That competent authority shall promptly transmit that information to ESMA and the Joint Monitoring Mechanism referred to in Article 23c.

3. ESMA shall, in cooperation with the EBA, EIOPA and ESRB and after consulting the ESCB, develop draft regulatory technical standards further specifying the content of the information to be reported and the level of detail of the information to be provided in accordance with paragraph 2, taking into account which information is already available to ESMA under the existing reporting framework.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA shall develop draft implementing technical standards specifying the format of the information to be submitted to the competent authority referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(5) Article 9 is amended as follows:

(a) in paragraph 1, the third and fourth subparagraphs are deleted;

(b) in paragraph 1a, fourth subparagraph,

- point (a) is replaced by the following:

"(a) that third country entity would be qualified as a financial counterparty if it were established in the Union; and"

- point (b) is deleted.

(6) in Article 10, paragraphs 2a to 5 are replaced by the following:

'2a. The relevant competent authorities of the non-financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure the effective calculation of the positions and evaluate and assess the level of exposure in OTC derivative contracts at the group level.

3. In calculating the positions referred to in paragraph 1, the non-financial counterparty shall include all the OTC derivative contracts that are not cleared in a CCP authorised under Article 14 or recognised under Article 25 entered into by the non-financial counterparty which are not objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty.

4. ESMA shall develop draft regulatory technical standards, after having consulted the ESRB and other relevant authorities, specifying all of the following:

(a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity referred to in paragraph 3;

(b) values of the clearing thresholds, which are determined taking into account the systemic relevance of the open positions and future net exposures per counterparty and per class of OTC derivatives;

(c) the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date =12 months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

ESMA shall review, in consultation with the ESRB, the clearing thresholds referred to in the first subparagraph, point (b), taking into account, in particular, the interconnectedness of financial counterparties. That review shall be conducted at least every 2 years, and earlier where necessary or where required under the mechanism established under the first subparagraph, point (c), and may propose changes to the thresholds as specified in the first subparagraph, point (b), by the regulatory technical standards adopted pursuant to this Article. When reviewing the clearing thresholds, ESMA shall consider whether the classes of OTC derivatives, for which a clearing threshold has been set, are still the relevant classes of OTC derivatives or if new classes should be introduced.

That periodic review shall be accompanied by a report by ESMA on the subject.

5. Each Member State shall designate an authority responsible for ensuring that the obligations of non-financial counterparties under this Regulation are met. That authority shall report to ESMA at least once a year, and more frequently where an emergency situation is identified under Article 24, on the activity in OTC derivatives of the non-financial counterparties it is responsible for as well as that of the group they belong to.

At least every 2 years, ESMA shall present a report to the European Parliament, the Council and the Commission on the activities of Union non-financial counterparties in OTC derivatives, identifying areas where there is a lack of convergence and coherence in the application of this Regulation as well as potential risks to the financial stability of the Union.';

(7) Article 11 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

'A non-financial counterparty becoming subject for the first time to the obligations laid down in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.';

(b) in paragraph 3, the following subparagraphs are added:

‘A non-financial counterparty becoming subject for the first time to the obligations laid out in the first subparagraph shall set up the necessary arrangements to comply with those obligations within four months following the notification referred to in Article 10(1), second subparagraph, point (a). A non-financial counterparty shall be exempted from those obligations for contracts entered into during the four months following that notification.

EBA may issue guidelines or recommendations with a view to ensure a uniform application of the risk-management procedures referred to in the first subparagraph, in accordance with the procedure laid down in Article 16 of Regulation (EU) No 1095/2010.

EBA shall develop drafts of those guidelines or recommendations in cooperation with the ESAs.’;

(c) in paragraph 15, first subparagraph, point (aa) is deleted.

(8) Article 13 is deleted;

(9) Article 14 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. The authorisation referred to in paragraph 1 shall be granted for activities linked to clearing and shall specify the services or activities which the CCP is authorised to provide or perform including the classes of financial instruments covered by such authorisation.

An entity applying for authorisation as a CCP to clear financial instruments shall include in its application, in addition to the classes of financial instrument it applies to clear, the classes of non-financial instruments suitable for clearing that such CCP intends to clear.

Where a CCP authorised pursuant to this Article intends to clear classes of non-financial instruments suitable for clearing, it shall apply for an extension of its authorisation pursuant to Article 15.’;

(b) the following paragraphs 6 and 7 are added:

‘6. To ensure the consistent application of this Article, ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that shall accompany an application for authorisation pursuant to paragraph 1 and specifying the information that such documents shall contain with a view to demonstrating that the CCP complies with all relevant requirements of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date =12 months after the date of entry into force of this Regulation]

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. ESMA shall develop draft implementing technical standards specifying the electronic format of the application to be submitted to the central database for authorisation referred to in paragraph 1.

ESMA shall submit those draft implementing technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(10) Article 15 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CCP wishing to extend its business to additional services or activities not covered by the existing authorisation shall submit a request for extension to the CCP's competent authority. The offering of clearing services or activities for which the CCP has not already been authorised shall be considered to be an extension of that authorisation.

The extension of authorisation shall be made in accordance with either of the following:

(a) the procedure set out in Article 17;

(b) the procedure set out in Article 17a where the applicant CCP so requests pursuant to Article 17a(3).';

(b) paragraph 3 is replaced by the following:

'3. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that shall accompany an application for an extension of authorisation pursuant to paragraph 1 and specifying the information such documents shall contain with a view to demonstrating that the CCP meets all relevant requirements of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(c) the following paragraph 4 is added:

'4. ESMA shall develop draft implementing technical standards specifying the electronic format of the application to be submitted to the central database for an extension of the authorisation referred to in paragraph 1.

ESMA shall submit those draft implementing technical standards to the Commission by … [PO: please insert the date = 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(11) Article 17 is amended as follows:

(a) the title of the Article is replaced by the following:

‘Procedure for granting and refusing an application for authorisation or for an extension of authorisation’

(b) paragraphs 1, 2 and 3 are replaced by the following:

‘1. The applicant CCP shall submit an application for authorisation as referred to in Article 14(1) or an application for an extension of its authorisation as referred to in Article 15(1) in an electronic format via the central database referred to in paragraph 7. The application shall be immediately shared with the CCP’s competent authority, ESMA and the college referred to in Article 18(1).

The CCP’s competent authority shall, within 2 working days after such application has been received, acknowledge receipt of the application, stating to the CCP whether it contains the documents required pursuant to Article 14(6) and (7) or, where the CCP has applied for an extension of its authorisation, pursuant to Article 15(3) and (4).

Where the CCP’s competent authority determines that not all documents required pursuant to Article 14(6) and (7) or Article 15(3) and (4) have been submitted, it shall reject the CCP’s application.

2. The applicant CCP shall provide all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the requirements laid down in this Regulation.

3. Within 40 working days of the end of the period set out in the second subparagraph of paragraph 1 (“the risk assessment period”), the CCP’s competent authority, ESMA and the college shall each conduct risk assessments of the CCP’s compliance with the relevant requirements laid down in this Regulation. By the end of the risk assessment period:

(a) the CCP’s competent authority shall transmit its draft decision and report to ESMA and the college;

(b) ESMA shall adopt an opinion in accordance with Article 24a(7) and transmit it to the CCP’s competent authority and the college;;

(c) the college shall adopt an opinion pursuant to Article 19 and transmit it to the CCP’s competent authority and ESMA.

For the purposes of point (b), ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management, in particular in relation to identified cross-border risks or risks to the financial stability of the Union.

For the purposes of point (c), the college may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management.’;

(d) the following paragraphs 3a and 3b are inserted:

‘3a. During the risk assessment period referred to in paragraph 3, the CCP’s competent authority, ESMA or any of the college members may submit questions directly to the CCP. Where the CCP does not respond to such questions within the time period set by the requesting authority, the CCP’s competent authority, ESMA or the college may take a decision in the absence of the CCP’s response or may decide to extend the assessment period by a maximum of 10 working days, if, in their view, the question is material for the assessment.

3b. Within 10 working days of receipt of both the ESMA opinion and the college opinion, the CCP's competent authority shall adopt its decision and transmit it to ESMA and the college.

Where the CCP's competent authority does not agree with an opinion of ESMA or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

ESMA shall publish the fact that a competent authority does not comply or does not intend to comply with its opinion or the opinion of the college or with any conditions or recommendations included therein. ESMA may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with the ESMA opinion or the college opinion or any conditions or recommendations contained therein.';

(e) paragraph 4 is replaced by the following:

'4. The CCP's competent authority shall, after duly considering the opinions of ESMA and the college referred to in paragraph 3, including any conditions or recommendations contained therein, grant authorisation as referred to in Articles 14 and Article 15(1), second subparagraph, point (a), only where it is fully satisfied that the applicant CCP:

(a) complies with all the requirements laid down in this Regulation including, where applicable, for the provision of clearing services or activities for non-financial instruments; and

(b) is notified as a system pursuant to Directive 98/26/EC.

The CCP shall not be authorised where all the members of the college, excluding the authorities of the Member State where the CCP is established, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the CCP not be authorised. That opinion shall state in writing the full and detailed reasons why the college considers that the requirements laid down in this Regulation or other Union law are not met.

Where a joint opinion by mutual agreement as referred to in the second subparagraph has not been reached and a majority of two-thirds of the college have expressed a negative opinion, any of the competent authorities concerned, based on that majority of two-thirds of the college, may, within 30 calendar days of the adoption of that negative opinion, refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The referral decision shall state in writing the full and detailed reasons why the relevant members of the college consider that the requirements laid down in this Regulation or other parts of Union law are not met. In that case the CCP's competent authority shall defer its decision on authorisation and await any decision on authorisation that ESMA may take in accordance with Article 19(3) of Regulation (EU) No 1095/2010. The competent authority shall take its decision in conformity with ESMA's decision. The matter shall not be referred to ESMA after the end of the 30-day period referred to in the third subparagraph.

Where all the members of the college, excluding the authorities of the Member State where the CCP is established, reach a joint opinion by mutual agreement, pursuant to Article 19(1), that the CCP not be authorised, the CCP's competent

authority may refer the matter to ESMA in accordance with Article 19 of Regulation (EU) No 1095/2010.

The competent authority of the Member State where the CCP is established shall transmit the decision to the other competent authorities concerned.';

(f) paragraph 7 is replaced by the following:

'7. ESMA shall maintain a central database providing access to the CCP's competent authority, ESMA, and the members of the college for that CCP ('registered recipients'), to all documents registered within the database for that CCP. The CCP shall submit the application referred to in Article 14, Article 15(1), second subparagraph, point (a), and Article 49 via that database.

The registered recipients shall upload promptly all documents they receive from the CCP in relation to an application pursuant to paragraph 1 and the central database shall automatically inform the registered recipients when changes have been made to its content. The central database shall contain all documents provided by an applicant CCP under paragraph 1 and all other documents relevant for the assessment by the CCP's competent authority, ESMA and the college.

Members of the CCP Supervisory Committee shall also have access to the central database for the performance of their tasks pursuant to Article 24a(7). The Chair of the CCP Supervisory Committee may limit access to some of the documents for the members of the CCP Supervisory Committee referred to in Article 24a, points (c) and (d)(ii), where justified based on confidentiality concerns.';

(12) the following Articles 17a and 17b are inserted:

'*Article 17a*

Non-objection procedure for granting a request for extension of activities or services

1. The non-objection procedure shall apply to non-material changes to a CCP's existing authorisation in any of the following cases where the proposed additional clearing service or activity:

(a) fulfils all of the following the conditions:

(i) the CCP intends to clear one or more financial instruments belonging to the same classes of financial instruments for which it has been authorised to clear under Articles 14 or 15;

(ii) the financial instruments referred to in point (i) are traded on a trading venue for which the CCP already provides clearing services or performs activities; and

(iii) the proposed additional clearing service or activity does not involve a payment in a new currency;

(b) adds a new Union currency in a class of financial instruments already covered by the CCP's authorisation; or

(c) adds one or more additional tenors to a class of financial instruments already covered by the CCP's authorisation provided that the maturity range is not significantly extended.

2. The CCP's competent authority may, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, also decide to apply the non-objection procedure of this Article where a CCP so requests and where the proposed additional clearing service or activity does not fulfil any of the following conditions:

(a) it results in the CCP needing to adapt significantly its operational structure, at any point in the contract cycle:

(b) it includes offering contracts that cannot be liquidated in the same manner, such as via direct offer or auction, or together with contracts already cleared by the CCP;

(c) it results in the CCP needing to take into account material new contract specifications, such as significant extensions of the ranges of maturities or a new option exercise styles within a category of contracts;

(d) it results in the introduction of material new risks, linked to the different characteristics of the assets referenced;

(e) it includes offering a new settlement or delivery mechanism or service which involves establishing links with a different securities settlement system, CSD or payment system which the CCP did not previously use.

3. A CCP that submits a request for extension requesting that the non-objection procedure be applied, shall demonstrate why the proposed extension of its business to additional clearing services or activities qualifies under paragraphs 1 or 2 to be assessed under the non-objection procedure. The CCP shall submit its application in an electronic format via the central database referred to in Article 17(7) and shall provide all information necessary to demonstrate that it has established, at the time of authorisation, all the necessary arrangements to meet the relevant requirements laid down in this Regulation.

A CCP that applies for an extension of its authorisation requesting that the non-objection procedure be applied and the proposed additional clearing services or activities fall within the scope of paragraph 1, may start clearing such additional financial instruments or non-financial instruments suitable for clearing before the decision of the CCP's competent authority pursuant to paragraph 4.

4. Within 10 working days of receipt of an application pursuant to paragraph 2, the CCP's competent authority shall, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, decide whether the application shall be subject to the non-objection procedure set out in this Article or, if the CCP's competent authority has identified material risks as a result of the proposed extension of the CCP's business to additional clearing services or activities, that the procedure set out in Article 17 shall apply. The CCP's competent authority shall notify the applicant CCP of its decision. Where the CCP's competent authority has decided that the procedure set out in Article 17 shall apply, the CCP shall, within 5 working days after receipt of such notification, cease providing such clearing service or activity.

5. Where a CCP's competent authority, after considering the input of the joint supervisory team set up for that CCP pursuant to Article 23b, has not expressed its objection to the CCP's proposed additional services or activities within 10 working days of receipt of the application where paragraph 1 applies or of receipt of the notification referred to in paragraph 4, where that paragraph applies, confirming that the non-

objection procedure set out in this Article applies, the authorisation shall be deemed as granted.

6. The Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation by specifying any changes to the list of non-material changes listed under paragraph 1, where such a change would not bring an increased risk to the CCP.

Article 17b

Procedure for seeking the opinion from ESMA and the college

1. A CCP's competent authority shall submit in electronic format via the central database referred to in Article 17(7) a request for an opinion:

(a) by ESMA pursuant to Article 23a(2), where the competent authority intends to adopt a decision in relation to Articles 7, 8, 20, 21, 29, 30, 31, 32, 33, 35, 36, 41 and 54;

(b) by the college pursuant to Article 18, where the competent authority intends to adopt a decision in relation to Article 20, 21, 30, 31, 32, 35, 41, 49, 51 and 54.

That request for an opinion shall be shared immediately with the registered recipients.

2. Unless otherwise specified under the relevant Article, ESMA and the college shall, within 30 working days of receipt of the request referred to in paragraph 1 ('the assessment period'), assess the CCP's compliance with the respective requirements. By the end of the assessment period:

(a) the CCP's competent authority shall transmit its draft decision and report to ESMA and the college;

(b) ESMA shall adopt an opinion in accordance with Article 24a(7), first subparagraph, point (bc), and transmit it to the CCP's competent authority and the college. ESMA may include in its opinion any conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management, in particular in relation to identified cross-border risks or risks to the financial stability of the Union;

(c) the college shall adopt an opinion pursuant to Article 19 and transmit it to ESMA and the CCP's competent authority. The college opinion may include conditions or recommendations it considers necessary to mitigate any shortcomings in the CCP's risk management.

3. Within 10 working days of receipt of the ESMA opinion and, where required, the college opinion, the CCP's competent authority shall, after duly considering the opinions of ESMA and the college, including any conditions or recommendations contained therein, adopt its decision and transmit it to ESMA and the college.

Where the CCP's competent authority does not agree with an opinion of ESMA or the college, including any conditions or recommendations contained therein, its decision shall contain full reasons and an explanation of any significant deviation from that opinion or conditions or recommendations.

ESMA shall publish the fact that a competent authority does not comply or does not intend to comply with its opinion or the opinion of the college or with any conditions or recommendations included therein. ESMA may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with the

ESMA opinion or the college opinion or any conditions or recommendations contained therein.';

(13) Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Within 30 calendar days of the submission of a complete application in accordance with Article 17, the CCP's competent authority shall establish a college to facilitate the exercise of the tasks referred to in Articles 15, 17 , 20, 21, 30, 31, 32, 35, 41, 49, 51 and 54.';

(b) in paragraph 2, point (a) is replaced by the following:

'(a) the Chair or any of the independent members of the CCP Supervisory Committee referred to in Article 24a(2), points (a) and (b), who shall manage and chair the college;';

(14) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Where the college is required to give an opinion pursuant to this Regulation, it shall reach a joint opinion determining whether the CCP complies with all the requirements laid down in this Regulation.

Without prejudice to Article 17(4), third subparagraph, and if no joint opinion is reached in accordance with the first subparagraph, the college shall adopt a majority opinion within the same period.';

(b) in paragraph 3, the fourth subparagraph is replaced by the following:

'The members of the college referred to in Article 18(2), points (ca) and (i), shall have no voting rights on the opinions of the college.';

(c) paragraph 4 is deleted;

(15) in Article 20, paragraphs 3 to 7 are replaced by the following:

'3. The CCP's competent authority shall consult ESMA and the members of the college, in accordance with paragraph 6, on the necessity to withdraw the authorisation of the CCP, except where a decision is required urgently.

4. ESMA or any member of the college may, at any time, request that the CCP's competent authority examine whether the CCP remains in compliance with the conditions under which authorisation was granted.

5. The CCP's competent authority may limit the withdrawal to a particular service, activity, or class of financial instruments or non-financial instruments.

6. Before the CCP's competent authority takes a decision to withdraw a particular service, activity, or class of financial instruments or non-financial instruments, it shall request the opinions of ESMA and the college in accordance with Article 17b.

7. Where a CCP's competent authority takes a decision on the withdrawal of authorisation in full or in relation to a particular service, activity, or class of financial instruments or non-financial instruments, that decision shall take effect throughout the Union.';

(16) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The competent authorities referred to in Article 22 shall do all of the following:

(a) review the arrangements, strategies, processes and mechanisms implemented by CCPs to comply with this Regulation;

(b) review the services or activities the CCP has started providing following the non-objection procedures pursuant to Article 17a or pursuant to Article 49;

(c) evaluate the risks, including financial and operational risks, to which CCPs are, or might be, exposed.’;

(b) paragraphs 3 and 4 are replaced by the following:

‘3. The competent authorities shall, after having considered the input of the joint supervisory team set up for that CCP pursuant to Article 23b, establish the frequency and depth of the review and evaluation referred to in paragraph 1 of this Article, having particular regard to the size, systemic importance, nature, scale, complexity of the activities and interconnectedness with other financial market infrastructures of the CCPs concerned and to the supervisory priorities established by ESMA in accordance with Article 24a(7), first subparagraph, point (ba). The competent authorities shall update the review and evaluation at least on an annual basis.

CCPs shall be subject to on-site inspections. Competent authorities shall invite the members of the joint supervisory team set up for that CCP pursuant to Article 23b, to participate in on-site inspections.

The competent authority shall forward to the members of the joint supervisory team set up for that CCP pursuant to Article 23b any information received from the CCPs during or in relation to on-site inspections.

4 The competent authorities shall regularly, and at least annually, submit a report to the college on the results of the review and evaluation as referred to in paragraph 1, including whether the competent authority has taken any remedial action or imposed penalties. The competent authorities shall communicate the report covering a calendar year to ESMA by 30 March of the following calendar year. That report shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.’;

(17) Article 23a is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. ESMA shall fulfil a coordination role between competent authorities and across colleges to:

(a) build a common supervisory culture and consistent supervisory practices;

(b) ensure uniform procedures and consistent approaches;

(c) strengthen consistency in supervisory outcomes, in particular with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact;

(d) strength coordination in emergency situations in accordance with Article 24;

(e) assess risks when providing opinions to competent authorities pursuant to paragraph 2 on CCPs’ compliance with the requirements of this Regulation, in

particular in relation to identified cross-border risks or risks to the financial stability of the Union, and providing recommendations as to how a CCP shall mitigate those risks.

2. Competent authorities shall submit their draft decisions to ESMA for its opinion before adopting any act or measure pursuant to Articles 7, 8 and 14, Article 15(1), second subparagraph, point (a) and Articles 20 and 21, Articles 29 to 33, and Articles 35, 36, 41, and 54.

Competent authorities may also submit draft decisions to ESMA for its opinion before adopting any other act or measure in accordance with their duties under Article 22(1).';

(b) paragraphs 3 and 4 are deleted;

(18) the following Articles 23b and 23c are inserted:

'*Article 23b*

Joint Supervisory Teams

1. A joint supervisory team shall be established for the supervision of each CCP authorised under Article 14. Each joint supervisory team shall be composed of staff members from the CCP's competent authority, ESMA and the members of the college referred to in Article 18, points (c), (g) and (h). Other members of the college may also request to participate in the joint supervisory team. Joint supervisory teams shall work under the coordination of a designated competent authority staff member.

2. The tasks of a joint supervisory team shall include, but are not limited to, all of the following:

(a) provide input to the competent authorities, ESMA and the colleges pursuant to Article 17a (2), (4) and (5)and Article 21(3);

(b) participate to on-site inspections pursuant to Article 21(3);

(c) liaise with competent authorities and members of the college, where relevant;

(d) where a CCP's competent authority so requests, provide assistance to that competent authority in assessing the CCP's compliance with the requirements of this Regulation.

3. The CCP's competent authority shall be in charge of the establishment of joint supervisory teams.

4. ESMA and authorities participating to the joint supervisory teams shall consult each other and agree on the use of resources with regard to the joint supervisory teams.

Article 23c

Joint Monitoring Mechanism

1. ESMA shall establish a Joint Monitoring Mechanism for the exercise of the tasks referred to in paragraph 2.

The Joint Monitoring Mechanism shall be composed of:

(a) representatives of ESMA;

(b) representatives of EBA and EIOPA;

(c) representatives of the Commission, the ESRB, the ECB and the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance Council Regulation (EU) No 1024/2013.

ESMA shall manage and chair the meetings of the Joint Monitoring Mechanism. The Chair of the Joint Monitoring Mechanism, upon request of the other members of the Joint Monitoring Mechanism or on his own initiative, may invite other authorities to participate in the meetings when relevant to the topics to be discussed.

2. The Joint Monitoring Mechanism shall:

(a) monitor the implementation of the requirements set out in Articles 7a and 7b, including all of the following:

(i) the overall exposures and reduction of exposures to substantially systemically important clearing services identified pursuant to Article 25(2c);

(ii) developments related to clearing in CCPs authorised under Article 14 and access to clearing by clients to such CCPs, including fees charged by such CCPs for establishing accounts pursuant to Article 7a and any fees charged by clearing members to their clients for establishing accounts and undertaking clearing pursuant to Article 7a;

(iii) other significant developments in clearing practices having an impact on the level of clearing at CCPs authorised under Article 14;

(b) monitor client clearing relationships, including portability and clearing members and clients' interdependencies and interactions with other financial market infrastructures;

(c) contribute to the development of Union-wide assessments of the resilience of CCPs focussing on liquidity risks concerning CCPs, clearing members and clients;

(d) identify concentration risks, in particular in client clearing, due to the integration of Union financial markets, including where several CCPs, clearing members or clients use the same service providers;

(e) monitor the effectiveness of the measures aimed at improving the attractiveness of Union CCPs, encouraging clearing at Union CCPs and enhancing the monitoring of cross-border risks.

The bodies participating in the Joint Monitoring Mechanism and national competent authorities shall cooperate and share the information necessary to carry out the monitoring activities referred to in the first subparagraph.

Where the required information is not made available, including information referred to in Article 7a(4), ESMA may, by simple request, require authorised CCPs, their clearing members and their clients to provide the necessary information enabling ESMA and the other bodies participating to Joint Monitoring Mechanism to perform the assessment referred to in the first subparagraph.

3. ESMA shall, in cooperation with the other bodies participating to the Joint Monitoring Mechanism, submit an annual report to the European Parliament, the Council and the Commission on the results of its activities pursuant to paragraph 2.

4. ESMA shall act in accordance with Article 17 of Regulation (EU) No 1095/2010 where, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein:

(a) it considers that competent authorities fail to ensure clearing members' and clients' compliance with the requirement set out in Article 7a;

(b) it identifies a risk to the financial stability of the Union due to an alleged breach or non-application of Union law.

Before acting in accordance with the first subparagraph, ESMA may issue guidelines or recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010.

5. Where ESMA, on the basis of the information received as part of the Joint Monitoring Mechanism and following the discussions held therein, considers that compliance with the requirement set out in Article 7a does not effectively ensure the reduction of Union clearing members' and clients' excessive exposure to Tier 2 CCPs, it shall review the regulatory technical standards referred to in Article 7a(5), setting, where necessary, an appropriate adaptation period which shall not exceed 12 months.';

(19) Article 24 is replaced by the following:

'*Article 24*

Emergency situations

1. The CCP's competent authority or any other relevant authority shall inform ESMA, the college, the relevant members of the ESCB, the Commission and other relevant authorities without undue delay of any emergency situation relating to a CCP, including all of the following:

(a) situations or events which impact, or are likely to impact, the prudential or financial soundness or the resilience of CCPs authorised in accordance with Article 14, their clearing members or clients;

(b) where a CCP intends to activate its recovery plan pursuant to Article 9 of Regulation (EU) No 2021/23, a competent authority has taken an early intervention measure pursuant to Article 18 of that Regulation or a competent authority has required a total or partial removal of the senior management or board of the CCP pursuant to Article 19 of that Regulation;

(c) where there are developments in financial markets, which may have an adverse effect on market liquidity, the transmission of monetary policy, the smooth operation of payment systems or the stability of the financial system in any of the Member States where the CCP or one of its clearing members are established.

2. ESMA shall coordinate competent authorities, the resolution authority designated pursuant to Article 3(1) of Regulation (EU) 2021/23 and colleges to build a common response to emergency situations relating to a CCP.

3. In case of emergency situations, except where a resolution authority has taken a resolution action in relation to a CCP pursuant to Article 21 of Regulation (EU) No 2021/23, and to coordinate the responses of competent authorities, a meeting of the CCP Supervisory Committee:

(a) may be convened by the Chair of the CCP Supervisory Committee;

(b) shall be convened by the Chair of the CCP Supervisory Committee, upon the request of two members of the CCP Supervisory Committee.

4. Any of the following authorities may also be invited to the meeting referred to in the paragraph 3, where relevant, considering the issues to be discussed at the meeting:

(a) the relevant central banks of issue;

(b) the relevant competent authorities for the supervision of clearing members, including, where relevant, the ECB in the framework of the tasks concerning the prudential supervision of credit institutions within the single supervisory mechanism conferred upon it in accordance with Council Regulation (EU) No 1024/2013;

(c) the relevant competent authorities for the supervision of trading venues;

(d) the relevant competent authorities for the supervision of clients where they are known;

(e) the relevant resolution authorities designated pursuant to Article 3(1) of Regulation (EU) 2021/23.

Where a meeting of the CCP Supervisory Committee is held pursuant to the first subparagraph, the Chair shall inform EBA, EIOPA, the ESRB and the Commission thereof who shall also be invited to participate to that meeting upon their request.

5. ESMA may, by simple request, require authorised CCPs, their clearing members and clients, connected financial market infrastructures and related third parties to whom those CCPs have outsourced operational functions or activities to provide all necessary information to enable ESMA to carry out its coordination function under this Article.

6. ESMA may, upon the proposal of the CCP Supervisory Committee, issue emergency recommendations pursuant to Article 16 of Regulation (EU) No 1095/2010 addressed to one or more competent authorities recommending them to adopt temporary or permanent supervisory decisions in line with the requirements set out in Article 16 and in Titles IV and V to avoid or mitigate significant adverse effects on the Union financial stability. ESMA may issue emergency recommendations only where more than one authorised CCP is impacted or where Union-wide events are destabilising cross-border cleared markets.';

(20) Article 24a is amended as follows:

(a) in paragraph 2, point (d) (ii) is replaced by the following:

'(ii) where the CCP Supervisory Committee convenes in relation to CCPs authorised in accordance with Article 14, in the context of discussions pertaining to paragraph 7 of this Article, the central banks of issue of the Union currencies of the financial instruments cleared by authorised CCPs that have requested membership of the CCP Supervisory Committee, who shall be non-voting.';

(b) paragraph 3 is replaced by the following;

'3. The Chair may invite as observers to the meetings of the CCP Supervisory Committee, where appropriate and necessary, members of the colleges referred to in Article 18, representatives from the relevant authorities of clients where they are known and from the relevant Union institutions and bodies.';

(c) paragraph 7 is amended as follows:

(i) the introductory wording is replaced by the following:

‘In relation to CCPs authorised or applying for authorisation in accordance with Article 14, the CCP Supervisory Committee shall, for the purpose of Article 23a(2), prepare decisions and carry out the tasks entrusted to ESMA in the following points:’;

(ii) the following points (ba), (bb) and (bc) are inserted:

‘(ba) at least annually, discuss and identify supervisory priorities for CCPs authorised under Article 14 in order to feed in the preparation of the Union strategic supervisory priorities by ESMA in accordance with Article 29a of Regulation (EU) No 1095/2010;

(bb) consider, in cooperation with the EBA, EIOPA, and the ECB in carrying out its tasks within a single supervisory mechanism under Regulation (EU) No 1024/2013, any cross-border risks arising from CCPs’ activities, including due to CCPs’ interconnectedness, interlinkages and concentration risks due to such cross-border connections;

(bc) prepare draft opinions for adoption by the Board of Supervisors in accordance with Articles 17 and 17b and draft validation decisions in accordance with Article 49;’;

(iii) the following subparagraph is added:

‘ESMA shall on a yearly basis report to the Commission on the cross-border risks arising from CCPs’ activities referred to in point (bb) in the first subparagraph.’;

(21) Article 25 is amended as follows:

(a) in paragraph 4, the third subparagraph is replaced by the following;

‘The recognition decision shall be based on the conditions set out in paragraph 2 for Tier 1 CCPs and in paragraph 2, points (a) to (d), and paragraph 2b for Tier 2 CCPs. Within 180 working days of the determination that an application is complete in accordance with the second subparagraph, ESMA shall inform the applicant CCP in writing, with a fully reasoned explanation, whether the recognition has been granted or refused.’;

(b) in paragraph 5, the second subparagraph is replaced by the following:

‘Where the review is undertaken in accordance with point (a) of the first subparagraph, it shall be conducted in accordance with paragraphs 2 to 4. Where the review is undertaken in accordance with point (b) of the first subparagraph, it shall also be conducted in accordance with paragraphs 2 to 4, however the CCP referred to in paragraph 1 shall not be required to submit a new application but shall provide ESMA with all information necessary for the review of its recognition.’;

(c) in paragraph 6, the following subparagraph is added:

‘Where in the interests of the Union and considering the potential risks for the Union financial stability due to the expected participation of clearing members and trading venues established in the Union to CCPs established in a third country, the Commission may adopt the implementing act referred to in the first subparagraph irrespective of whether point (c) of that subparagraph is fulfilled.’;

(d) paragraph 7 is replaced by the following:

'7. ESMA shall establish effective cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6..';

(e) the following paragraphs 7a, 7b and 7c are added:

'7a. Where ESMA has not yet determined the tiering of a CCP or where ESMA has determined that all or some CCPs in a relevant third country are Tier 1 CCPs, the cooperation arrangements referred to in paragraph 7 shall take into account the risk the provision of clearing services by those CCPs entails and shall specify:

(a) the mechanism for the exchange of information on an annual basis between ESMA, the central banks of issue referred to in paragraph 3, point (f), and the competent authorities of the third countries concerned, so that ESMA is able to:

(i) ensure that the CCP complies with the conditions for recognition under paragraph 2;

(ii) identify any potential material impact on market liquidity or the financial stability of the Union or one or more of its Member States; and

(iii) monitor clearing activities in one, or more, of the CCPs established in such third country by clearing members established in the Union, or is part of a group subject to consolidated supervision in the Union.

(b) exceptionally, the mechanism for the exchange of information on a quarterly basis requiring detailed information covering the aspects referred to in paragraph 2a and in particular information on significant changes to risk models and parameters, extension of CCP activities and services and changes in the client account structure, with the aim to detect if a CCP is potentially close to becoming or is potentially likely to become systemically important for the financial stability of the Union or one or more of its Member States.

(c) the mechanism for prompt notification to ESMA where a third-country competent authority deems a CCP it is supervising to be in breach of the conditions of its authorisation or of other law to which it is subject;

(d) the procedures necessary for the effective monitoring of regulatory and supervisory developments in a third country;

(e) the procedures for third-country authorities to inform ESMA, the third-country CCP college referred to in Article 25c, and the central banks of issue referred to in paragraph 3, point (f), without undue delay of any emergency situations relating to the recognised CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in the Union or one of its Member States and the procedures and contingency plans to address such situations;

(f) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA in accordance with Articles 25f, 25k(1), point (b), 25l, 25m and 25p;

(g) the consent of third-country authorities to the onward sharing of any information they have provided to ESMA under the cooperation arrangements with the authorities referred to in paragraph 3 and the members of the third-country CCP college, subject to the professional secrecy requirements set out in Article 83.

7b. Where ESMA has determined that at least one CCP in a relevant third country is a Tier 2 CCP, the cooperation arrangements referred to in paragraph 7 shall specify in relation to those Tier 2 CCPs at least the following:

(a) the elements referred to in paragraph 7a, points (a), (c), (d), (e) and (g), where cooperation arrangements are not already established with the relevant third-country pursuant to the second subparagraph;

(b) the mechanism for the exchange of information on a monthly basis between ESMA, the central banks of issue referred to paragraph 3, point (f), and the competent authorities of the third countries concerned, including access to all information requested by ESMA to ensure CCP's compliance with the requirements referred to in paragraph 2b;

(c) the procedures concerning the coordination of supervisory activities, including the agreement of third-country authorities to allow investigations and on-site inspections in accordance with Articles 25g and 25h respectively;

(d) the procedures for third-country authorities to assure the effective enforcement of decisions adopted by ESMA in accordance with Articles 25b, 25f to 25m, 25p and 25q;

(e) the procedures for third-country authorities to promptly inform ESMA of the following with a focus on aspects relevant for the Union or one or more of its Member States:

(i) the establishment of recovery plans and resolution plans and any subsequent material changes to such plans;

(ii) if a Tier 2 CCP intends to activate its recovery plan or where the third-country authorities have determined that there are indications of an emerging crisis situation that could affect the operations of that CCP, in particular, its ability to provide clearing services or where the third-country authorities envisage to take a resolution action in the near future.

7c. Where ESMA considers that a third-country competent authority fails to apply any of the provisions laid down in a cooperation arrangement established in accordance with paragraphs 7, 7a and 7b, it shall inform the Commission thereof confidentially and without delay. In such a case, the Commission may decide to review the implementing act adopted in accordance with paragraph 6.';

(22) in Article 25b(1), the second subparagraph is replaced by the following:

'ESMA shall require from each Tier 2 CCP all of the following:

(i) a confirmation, at least on a yearly basis, that the requirements referred to in Article 25(2b) points (a), (c) and (d), continue to be fulfilled;

(ii) information and data on a regular basis to ensure ESMA is able to supervise those CCPs' compliance with the requirements referred to in Article 25(2b), point (a).';

(23) in Article 25p(1), point (c) is replaced by the following;

'(c) the CCP concerned has seriously and systematically infringed any of the applicable requirements laid down in this Regulation or no longer complies with any of the conditions for recognition laid down in Article 25 and has not taken the remedial action requested by ESMA within an appropriately set timeframe of up to a maximum of one year.';

(24) the following Article 25r is inserted:

'*Article 25r*

Public notice

Without prejudice to Articles 25p and 25q, ESMA may issue a public notice where all of the following conditions have been fulfilled:

(a) a third-country CCP has not paid the fees due under Article 25d or it has not paid fines due under Article 25j or periodic penalty payments due under Article 25k;

(b) the CCP has not taken any remedial action requested by ESMA in any of the situations laid down in Article 25p(1), point (c) within an appropriately set timeframe of up to six months.';

(25) in Article 26(1), the first subparagraph is replaced by the following:

'1. A CCP shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures. A CCP shall not be or become a clearing member, a client, or establish indirect clearing arrangements with a clearing member with the aim to undertake clearing activities at a CCP.';

(26) Article 31 is amended as follows:

(a) in paragraph 2,the third and fourth subparagraph are replaced by the following:

'The competent authority shall, promptly and in any event within two working days of receipt of the notification referred to in this paragraph and of the information referred to in paragraph 3, acknowledge receipt in writing thereof to the proposed acquirer or vendor and share the information with ESMA and the college.

Within 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 32(4) and unless extended in accordance with this Article, ('the assessment period'), the competent authority shall carry out the assessment provided for in Article 32(1) ('the assessment'). The college shall issue an opinion pursuant to Article 19 and ESMA shall issue an

opinion pursuant to Article 24a(7), first subparagraph, point (bc) and in accordance with the procedure under Article 17b during the assessment period.';

(b) in paragraph 3 the first subparagraph is replaced by the following:

'The competent authority, ESMA and the college may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.';

(27) in Article 32(1), the fourth subparagraph is replaced by the following:

'The assessment of the competent authority concerning the notification provided for in Article 31(2) and the information referred to in Article 31(3), shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure set out in Article 17b.';

(28) Article 35 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

'A CCP shall not outsource major activities linked to risk management unless such outsourcing is approved by the competent authority. The decision of the competent authority shall be subject to an opinion of the college pursuant to Article 19 and an opinion by ESMA pursuant to Article 24a(7)(bc) issued in accordance with the procedure set out in Article 17b.';

(b) paragraph 3 is replaced by the following:

'3. A CCP shall make all information necessary to enable the competent authority, ESMA and the college to assess the compliance of the performance of the outsourced activities with this Regulation available on request.';

(29) Article 37 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CCP shall establish, where relevant per type of product cleared, the categories of admissible clearing members and the admission criteria, upon the advice of the risk committee pursuant to Article 28(3). Such criteria shall be non-discriminatory, transparent and objective so as to ensure fair and open access to the CCP and shall ensure that clearing members have sufficient financial resources and operational capacity to meet the obligations arising from participation in a CCP. Criteria that restrict access shall be permitted only to the extent that their objective is to control the risk for the CCP. The criteria shall ensure that CCPs or clearing houses cannot be clearing members, directly or indirectly, of the CCP.';

(b) the following paragraph 1a is inserted:

'1a. A CCP shall accept non-financial counterparties as clearing members only if they are able to demonstrate that they are able to fulfil the margin requirements and default fund contributions, including in stressed market conditions.

The competent authority of a CCP accepting non-financial counterparties shall regularly review such arrangements and report to ESMA and the college on their appropriateness.

A non-financial counterparty acting as a clearing member shall not be permitted to offer client clearing services and shall only keep accounts at the CCP for assets and positions held for its own account.

ESMA may issue an opinion or a recommendation on the appropriateness of such arrangements following an ad-hoc peer review.';

(c) the following paragraph 7 is added:

'7. ESMA shall, after having consulted the EBA, develop draft regulatory technical standards further specifying the elements to be considered when laying down the admission criteria referred to in paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please enter 12 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010".

(30) Article 38 is amended as follows:

(a) in paragraph 7, the following subparagraph is added:

'Clearing members providing clearing services and clients providing clearing services shall inform their clients in a clear and transparent manner of the way the margin models of the CCP work, including in stress situations, and provide them with a simulation of the margin requirements they may be subject to under different scenarios. This shall include both the margins required by the CCP and any additional margins required by the clearing members and the clients providing clearing services themselves.';

(b) paragraph 8 is replaced by the following:

'8. The clearing members of the CCP and clients providing clearing services, shall clearly inform their existing and potential clients of the potential losses or other costs that they may bear as a result of the application of default management procedures and loss and position allocation arrangements under the CCP's operating rules, including the type of compensation they may receive, taking into account Article 48(7). Clients shall be provided with sufficiently detailed information to ensure that they understand the worst-case losses or other costs they could face should the CCP undertake recovery measures.';

(31) Article 41 is amended as follows:

(a) paragraphs 1, 2 and are replaced by the following:

'1. A CCP shall impose, call and collect margins to limit its credit exposures from its clearing members and, where relevant, from CCPs with which it has interoperability arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. They shall also be sufficient to cover losses that result from at least 99 % of the exposures movements over an appropriate time horizon and they shall ensure that a CCP fully collateralises its exposures with all its clearing members, and, where relevant, with CCPs with which it has interoperability arrangements, at least on a daily basis. A CCP shall continuously monitor and revise the level of its margins to reflect current market conditions taking into account any potentially procyclical effects of such revisions.

2. A CCP shall adopt models and parameters in setting its margin requirements that capture the risk characteristics of the products cleared and take into account the interval between margin collections, market liquidity and the possibility of changes over the duration of the transaction. The models shall be validated by the competent authority and subject to an opinion in accordance with Article 19 and an opinion by ESMA in accordance with Article 24a(7), first subparagraph, point (bc), issued in accordance with the procedure under Article 17b.

3. A CCP shall call and collect margins on an intraday basis, at least when predefined thresholds are exceeded. In doing so a CCP shall consider the potential impact of its intraday margin collections and payments on the liquidity position of its participants. A CCP shall strive to the best of its ability not to hold intraday variation margin calls after all payments due have been received.';

(32) in Article 44(1), the second subparagraph is replaced by the following :

'A CCP shall measure, on a daily basis, its potential liquidity needs. It shall take into account the liquidity risk generated by the default of at least the two entities, including clearing members or liquidity providers, to which it has the largest exposures.';

(33) Article 46 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. A CCP may accept public guarantees or public bank or commercial bank guarantees, provided that they are unconditionally available upon request within the liquidation period referred to in Article 41. Where bank guarantees are provided to a CCP, that CCP shall take them into account when calculating its exposure to the bank that is also a clearing member. The CCP shall apply adequate haircuts to asset values and guarantees to reflect the potential for their value to decline over the interval between their last revaluation and the time by which they can reasonably be assumed to be liquidated. It shall take into account the liquidity risk following the default of a market participant and the concentration risk on certain assets that may result in establishing the acceptable collateral and the relevant haircuts. When revising the level of the haircuts it applies to the assets it accepts as collateral, the CCP shall take into account any potential procyclicality effects of such revisions.';

(b) in paragraph 3, first subparagraph, point (b) is replaced by the following:

'(b) the haircuts referred to in paragraph 1, taking into account the objective to limit their procyclicality; and';

(34) Article 49 is amended as follows:

(a) paragraphs 1 to 1e are replaced by the following:

'1. A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted. The CCP shall obtain independent validation, shall inform its competent authority and ESMA of the results of the tests performed and shall obtain their validation in

accordance with paragraphs 1a, to 1e before adopting any significant change to the models.

The adopted models, including any significant change thereto, shall be subject to an opinion of the college in accordance with this Article.

ESMA shall ensure that information on the results of the stress tests is passed on to the ESAs, the ESCB and the Single Resolution Board to enable them to assess the exposure of financial undertakings to the default of CCPs.

1a. Where a CCP intends to adopt any significant change to the models referred to in paragraph 1, it shall submit an application for authorisation of such change in an electronic format via the central database referred to in Article 17(7) where it shall be immediately shared with the CCP's competent authority, ESMA and the college. The CCP shall enclose an independent validation of the intended change to its application.

Where a CCP considers that the change to the models referred to in paragraph 1 it intends to adopt is not significant as referred to paragraph 1g, the CCP shall request that the application be subject to a non-objection procedure under paragraph 1b. In that case, the CCP may start applying such change before the decision of the CCP's competent authority and ESMA pursuant to paragraph 1b.

The CCP's competent authority shall, in cooperation with ESMA, within 2 working days after such application has been received, acknowledge receipt of the application, confirming to the CCP that it contains the required documents. Where one of them concludes that the application does not contain the required documents, the application shall be rejected.

1b. Within 10 working days of the date referred to in the third subparagraph of paragraph 1a, the competent authority and ESMA shall assess if the proposed change qualifies as a significant change pursuant to paragraph 1g. Where one of them concludes that the change meets one of the conditions referred to in paragraph 1g, the application shall be assessed under paragraphs 1c, 1d and1e and the CCP's competent authority, in cooperation with ESMA, shall inform in writing the applicant CCP thereof.

Where within 10 working days of the date referred to in the third subparagraph of paragraph 1a, the applicant CCP has not been informed in writing that its request for the non-objection procedure to apply has been denied, that change shall be deemed as validated.

Where a request for the non-objection procedure has been denied, the CCP shall, within 5 working days from the notification referred to in the first subparagraph, no longer use that model change. Within 10 working days from that notification, the CCP shall either withdraw the application or complement the application with the independent validation of the change.

1c. Within 30 working days of the date referred to in the third subparagraph of paragraph 1a:

(a) the competent authority shall conduct a risk assessment of the significant change and submit its report to ESMA and the college;

(b) ESMA shall conduct a risk assessment of the significant change and submit its report to the CCP competent authority and the college.

1d. Within 10 working days of receipt of the reports referred to in paragraph 1c, the CCP's competent authority and ESMA shall each adopt a decision, taking into account such reports and inform each other of the decision taken. Where one of them has not validated the change, the validation shall be refused.

1e. Within 5 working days of the decisions being adopted under paragraph 1d, the competent authority and ESMA shall inform the CCP in writing, including a fully reasoned explanation, whether the validation has been granted or refused.

(b) the following paragraphs 1f and 1g are inserted:

1f. The CCP may not adopt any significant change to the models referred to in paragraph 1, before obtaining the validations by its competent authority and ESMA. The competent authority, in agreement with ESMA, may allow for a provisional adoption of a significant change of those models prior to their validations where duly justified due to an emergency situation under Article 24 of this Regulation. Such a temporary change to the models shall only be allowed for a certain period of time jointly specified by the CCP's competent authority and ESMA. After the expiry of this period, the CCP shall not be allowed to use such model change unless it has been approved pursuant to paragraphs 1a, 1c, 1d and 1e.

1g. A change shall be considered as significant where one of following conditions is met:

(a) the change leads to a decrease or increase of the total pre-funded financial resources, including margin requirements, default fund and skin-in-the-game, greater than 15 %;

(b) the structure, structural elements or the margin parameters of the margin model are changed or a margin module is introduced, removed, or amended in a manner which leads to a decrease or increase of this margin module greater than 15 % at the CCP level;

(c) the methodology used to compute portfolio offsets is changed leading to a decrease or increase of the total margin requirements for these financial instruments greater than 10 %;

(d) the methodology for defining and calibrating stress test scenarios for the purpose of determining default fund exposures, is changed, leading to a decrease or increase greater than 20 % of a default fund, or greater than 50 % of any individual default fund contribution;

(e) the methodology applied to assess liquidity risk and monitor concentration risk, is changed, leading to a decrease or increase of the estimated liquidity needs in any currency greater than 20 % or the total liquidity needs greater than 10 %;

(f) the methodology applied to value collateral, calibrate collateral haircut or set concentration limits, is changed, such that the total value of non-cash collateral decreases or increases by more than 10 %; provided that the CCP's proposed change does not fulfil any criteria for the extension of CCP's authorisation specified in Article 2(1);

(g) any other change to the models that could have a material effect on the overall risk of the CCP."

(c) paragraph 5 is replaced by the following:

'5. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards specifying the list of required documents that shall accompany

an application for validation pursuant to paragraph 1a and shall specify the information such documents shall contain to demonstrate that the CCP complies with all relevant requirements of this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO: please insert date =12 months after the date of entry into force of this Regulation]

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(d) the following paragraph 6 is added:

'6. ESMA shall develop draft implementing technical standards specifying the electronic format of the application for validation referred to in paragraph 1a to be submitted to the central database.

ESMA shall submit those draft implementing technical standards to the Commission by… [PO: please insert date = 12 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.';

(1) in Article 54, paragraph 1 is replaced by the following:

'1. An interoperability arrangement shall be subject to the prior approval of the competent authorities of the CCPs involved. The CCPs' competent authorities shall request the opinion of ESMA in accordance with 24a(7), first subparagraph, point (bc), and the college in accordance with Article 19, and issued in accordance with the procedure set out in Article 17b.';

(2) In Article 82, paragraphs 2 and 3 are replaced by the following:

"2. The power to adopt delegated acts referred to in Articles 1(6), Article 3(5), Article 4(3a), Article 7a(6), Article 17a(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70, Article 72(3), and Article 85(2) shall be conferred to the Commission for an indeterminate period of time.

3. The delegation of power referred to in Article 1(6), Article 3(5), Article 4(3a), Article 7a(6), Article 17a(6), Article 25(2a), Article 25(6a), Article 25a(3), Article 25d(3), Article 25i(7), Article 25o, Article 64(7), Article 70, Article 72(3) and Article 85(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

(3) Article 85 is amended as follows;

(a) paragraph 1 is replaced by the following:

'1. By [PO: please insert the date =5 years after the date of entry into force of this Regulation] the Commission shall assess the application of this Regulation and prepare a general report. The Commission shall submit that report to the

European Parliament and to the Council, together with any appropriate proposals.';

(b) the following paragraph 1b is inserted:

'1b. By [PO: please insert the date = 1 year after the entry into force of this Regulation] ESMA shall submit a report to the Commission on the possibility and feasibility to require the segregation of accounts across the clearing chain of non-financial and financial counterparties. The report shall be accompanied by a cost-benefit analysis.';

(c) paragraph 7 is deleted;

(4) Article 90 is amended as follows:

"By [PO please insert the date = please insert 3 years after the date of entry into force of this Regulation], ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Regulation and submit a report to the European Parliament, the Council and the Commission."

Article 2

Amendments to Regulation (EU) No 575/2013

Article 382 of Regulation (EU) No 575/2013 is amended as follows:

(1) in paragraph 4, point (b) is replaced by the following:

'(b) intragroup transactions entered into with financial counterparties as defined in Article 2, point 8, of Regulation (EU) No 648/2012, financial institutions or ancillary services undertakings that are established in the Union or that are established in a third country that applies prudential and supervisory requirements to those financial counterparties, financial institutions or ancillary services undertakings that are at least equivalent to those applied in the Union, unless Member States adopt national law requiring the structural separation within a banking group, in which case the competent authorities may require those intragroup transactions between the structurally separated entities to be included in the own funds requirements;'

(2) the following paragraph [4c] is inserted:

'[4c]. For the purposes of paragraph 4, point (b), the Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision as to whether a third country applies prudential supervisory and regulatory requirements at least equivalent to those applied in the Union.

In the absence of such a decision, institutions may until 31 December 2027 continue to exclude the concerned intragroup transactions from the own funds requirements for CVA risk provided that the relevant competent authorities have approved the third country as eligible for that treatment before 31 December 2026. Competent authorities shall notify the EBA of such cases by 31 March 2027.'

Article 3

Amendments to Regulation (EU) 2017/1131

Regulation (EU) 2017/1131 is amended as follows:

(1) in Article 2, the following point (24) is added

‘(24) ‘CCP’ means a legal personas referred to in Article 2 (1) of Regulation (EU) No 648/2012.’;

(2) Article 17 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The aggregate risk exposure to the same counterparty of an MMF stemming from derivative transactions which fulfil the conditions set out in Article 13 and which are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, shall not exceed 5 % of the assets of the MMF.’;

(b) in paragraph 6, first subparagraph, point (c) is replaced by the following:

‘(c) financial derivative instruments that are not centrally cleared through a CCP authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation, giving counterparty risk exposure to that body.’.

Article 4

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

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1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

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LEGISLATIVE FINANCIAL STATEMENT

FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 Text with EEA relevance.

1.2. Policy area(s) concerned

Internal Market – Financial Services.

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action**[40]

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

Promote financial stability and strengthen the Capital Markets Union (CMU).

1.4.2. Specific objective(s)

This proposal has the following specific objectives to achieve the general objectives for the EU internal market for central clearing services:

- Encourage clearing at EU CCPs and reduce excessive reliance on systemic non-EU CCP by building a more attractive and robust EU clearing market.

- Ensure that the supervisory framework for EU CCPs is sufficient to manage the risks associated with the interconnectedness of the EU financial system and increasing clearing volumes, in particular in respect to cross-border risks, as these risks could be further amplified as EU clearing markets grow.

Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposal aims to strengthen the EU clearing market by improving the attractiveness of EU CCPs, encouraging clearing in EU CCPs and enhancing the assessment and management of cross-border risks.

[40] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.3. Indicators of performance

Specify the indicators for monitoring progress and achievements.

For each specific objective the following performance indicators have been set. Improve the attractiveness of EU CCPs:

– Measured by % of contracts cleared by EU clearing participants in EU and third-country CCPs.

– Number of new EU CCP products approved.

– Time taken on average (number of days) to approve new CCP products and validate model changes.

– Number of non-objection procedures completed.

Encourage clearing in EU CCPs:

– Average amounts on active accounts at EU CCPs.

– Transactions cleared in EU CCPs in different currencies (absolute value and compared to global markets).

– Number of clearing members and clients in EU CCPs.

– Volume of contracts cleared outside EU CCPs by EU actors or for EU-currency denominated contracts.

Enhancing the assessment of cross-border risks:

– Number of opinions issued by ESMA per year.

– Number of cases where NCAs deviate from ESMA opinions.

– Number of joint supervisory teams established and tasks performed.

– Number of times ESMA coordinated information requests or asked.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The requirements this proposal aims to meet are to have modern and competitive CCPs in the EU that can attract business while at the same time having safe and resilient EU CCPs and enhance the EU's open strategic autonomy. With the implementation of this proposal including its intended further development in level 2, the requirements are expected – subject to the agreement by the co-legislators – to be absorbed by both the supervisory community as well as the market at the latest by June 2025.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

The EU clearing market is an inseparable part of the EU financial market. As such, EU action should ensure that EU financial market participants do not face too high risks due to the excessive reliance on systemic third-country CCPs where in case of distress, decisions would be taken by third-country authorities prevent the EU from the option to intervene in emergency situations.

Expected generated Union added value (ex-post)

The objectives of EMIR, namely to regulate derivatives transactions, promote financial stability and to make markets more transparent, more standardised, and thus safer, are an essential building block for a successful EU financial internal market, especially regarding the cross – border component. Member States and national supervisors cannot solve on their own or address cross-border risks related to central clearing within the EU or the framework for third-country CCPs.

1.5.3. Lessons learned from similar experiences in the past

This proposal takes into account experiences gained with previous versions of EMIR.

EMIR regulates derivatives transactions, including measures to limit their risks through CCPs. It was adopted in the wake of the 2008/2009 financial crisis to promote financial stability and to make markets more transparent, more standardised, and thus safer. Similar reforms were implemented in most G20 countries. EMIR requires that derivatives transactions are reported to ensure market transparency for regulators and supervisors; and that their risks are appropriately mitigated through centrally clearing at a CCP or exchanging collateral, known as 'margin', in bilateral transactions. CCPs and the risks they manage have grown considerably since the adoption of EMIR.

In 2017, the Commission published two legislative proposals amending EMIR, both adopted by the co-legislators in 2019. EMIR REFIT[41] recalibrated some of the rules to ensure their proportionality, while ensuring financial stability. Acknowledging the emerging issues related to the increasing concentration of risks in CCPs, in particular third-country CCPs, EMIR 2.2[42] revised the supervisory framework and set out a process for assessing the systemic nature of third-country CCPs by ESMA in cooperation with the European Systemic Risk Board (ESRB) and the central banks of issue. EMIR was complemented by the CCP Recovery and Resolution Regulation[43], adopted in 2020, to prepare for the unlikely – though massively impactful - event that an EU CCP faces severe distress. Financial stability is at the core of these pieces of EU legislation. Since 2017, concerns have been repeatedly expressed about the ongoing risks to the EU financial stability arising from the excessive concentration of

41 Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (Text with EEA relevance.); OJ L 141, 28.5.2019, p. 42–63.

42 Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs; OJ L 322, 12.12.2019, p. 1–44.

43 Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties, OJ L 22, 22.1.2021, p. 1–102.

clearing in some third-country CCPs, notably the potential risks in a stress scenario. Furthermore, high-risk but low-probability events can happen and the EU must be prepared to face them. While EU CCPs have generally proven resilient throughout these developments, experience has shown that the EU clearing ecosystem can be made stronger, to the benefit of financial stability. However, in order to ensure open strategic autonomy the EU needs to safeguard itself against the risks which can arise when EU market participants are excessively reliant on third-country entities, as this can be a source of vulnerabilities.

The experiences gained with EMIR as outlined above, are taken into account in the design of the new proposed requirements.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

This proposal and its specific requirements are in line with the current arrangements for financial services within the Multiannual Financial Framework (MFF) and aligned with standard practices of putting the EU budget to work and in line with current the Commission services' practices in planning and budgeting for new proposals.

In addition, the objectives of the initiative are consistent with other EU policies and ongoing initiatives that aim to: (i) develop the CMU, and (ii) enhance the efficiency and effectiveness of EU-level supervision, both within and outside the EU.

First, it is consistent with the Commission's ongoing efforts to further develop the Capital Markets Union ('CMU')[44]. The issues addressed by this proposal affect EU financial stability as they obstruct the reduction of excessive exposures to systemic CCPs and constitute a significant impediment to developing an efficient and attractive EU clearing market, a foundation stone for a deep and liquid CMU. The urgency of further developing and integrating EU capital markets was stressed in the Action Plan on CMU of September 2020.

Second, it is consistent with the Commission services' experience with the implementation and enforcement of third-country provisions in EU financial legislation and implements practical experience gained by the Commission services when approaching these tasks in practice.

Third, it is consistent with the EU open strategic autonomy[45] objective.

1.5.5. Assessment of the different available financing options, including scope for redeployment

N/A

[44] Communication from the Commission, A Capital Markets Union for people and businesses – New action plan, COM(2020) 590

[45] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: The European economic and financial system: fostering openness, strength and resilience COM/2021/32 final.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

Implementation with a start-up period from YYYY to YYYY,

followed by full-scale operation.

1.7. Management mode(s) planned[46]

☐ **Direct management** by the Commission

☐ by its departments, including by its staff in the Union delegations;

☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

☐ third countries or the bodies they have designated;

☐ international organisations and their agencies (to be specified);

☐ the EIB and the European Investment Fund;

☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

If more than one management mode is indicated, please provide details in the 'Comments' section.

Comments

N/A

[46] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

In line with already existing arrangements ESMA prepares regular reports on its activity (including internal reporting to Senior Management, Management Board reporting, six month activity reporting to the Board of Supervisors and the production of the annual report), and undergoes audits by the Court of Auditors and the Internal Audit Service on its use of resources. In addition the proposal provides some further monitoring and reporting obligations on ESMA in relation to the new features of the Regulation, including the active account. The Commission shall provide a report 5 years after the Regulation enter into force.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

In relation to the legal, economic, efficient and effective use of appropriations resulting from the proposal, it is expected that the proposal would not bring about new risks that would not be currently covered by an existing internal control framework.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Management and control systems as provided for in the ESMA Regulation are already implemented. ESMA works closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are met in all internal controls areas. These arrangements will apply also with regard to the role of ESMA according to the present proposal. Annual internal audit reports are sent to the Commission, Parliament and Council.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

N/A

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 apply to ESMA without any restrictions. ESMA has acceded to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the

European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and adopt appropriate provisions for all ESMA staff.

The funding decisions and the agreements and the implementing instruments resulting from them explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on the spot checks on the beneficiaries of monies disbursed by ESMA as well as on the staff responsible for allocating these monies.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[47]	from EFTA countries[48]	from candidate countries[49]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

[47] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[48] EFTA: European Free Trade Association.

[49] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

This legislative initiative will have no impact on expenditures for the European Securities and Markets Authority (ESMA) or other bodies of the European Union.

ESMA: The impact assessment identified only moderate additional costs for ESMA, while at the same time the proposed measures create efficiencies that will lead to cost reductions. In addition, some provisions clarify and recalibrate the role of ESMA whilst not constituting new tasks and are therefore to be considered budget neutral.

Costs identified relate to the setting up and operation of a new IT tool for the submission of supervisory documents. However, even though ESMA might incur higher costs related to developing or choosing such a new IT tool as well as operating it, this IT tool will also create efficiencies and ESMA will benefit from those. These efficiencies relate to considerably less manual work in the reconciliation and sharing of documents, the following up on deadlines and questions as well as coordination with national competent authorities (NCAs), the college and the CCP Supervisory Committee. These benefits are likely to outweigh the costs incurred.

Furthermore, initial additional (paper-)work related to the modification of tools and procedures, as well as to enhanced cooperation, may increase costs initially, but is likely to be reduced, or remain stable, over time. Notably, ESMA will be required to draft regulatory / implementing technical standards (RTS/ITS) on the format and content of the documents CCPs are required to submit to supervisory authorities, the specification of the requirement for clearing members and clients to have an active account at a Union CCP, the calculation methodology to be used to calculate the proportion, the scope and details of the reporting by EU clearing members and clients to their competent authorities on their clearing activity in third-country CCPs and whilst providing the mechanisms triggering a review of the values of the clearing thresholds following significant price fluctuations in the underlying class of OTC derivatives to also review the scope of the hedging exemption and thresholds for the clearing obligation to apply as well as an annual report on the results of their monitoring activity. In undertaking those activities, ESMA can build on already existing internal processes and procedures, and it may convert, where relevant, those procedures into RTSs/ITSs. In defining the active account requirement, for some already identified instruments, and their ongoing monitoring, ESMA can take into account the work it has undertaken under Article 25(2c) of EMIR when assessing which Tier 2 CCPs' clearing services are of substantial systemic importance to the Union or one or more of its Member States and might therefore only require some very limited additional resources.

Another category to be considered in the cost analysis is the modification of procedures and tools to the new supervisory cooperation framework. The cooperation in joint supervisory teams and the establishment of a joint monitoring mechanism at EU level are new elements in the supervisory framework. However, they are mainly tools to improve the cooperation between authorities and cover tasks that are already, in all essential parts, performed by the authorities, except for the monitoring of the implementation of the requirements set out for active accounts at EU CCPs, such as fees for access charged by CCPs to clients for active accounts. These new structures will likely require some reorganisation of staff and potentially create the need for additional meetings but will not have substantial budgetary

implications. Moreover, the recalibrated supervisory process also comes with benefits, notably clearer responsibilities avoiding unnecessary duplicative work and less work due to the introduction of non-objection procedures which enable ESMA and NCAs to focus on the material aspects of supervision in relation to the extension of clearing services and changes to CCPs' risk models.

The proposed approach towards third-country CCPs that refuse to pay fees to ESMA consists in issuing a public notice after 6 months due and initiate the withdrawal of recognition after 1 year due. This change will be positive in terms of costs. This avoids ESMA from having to invest a considerable amount of work without getting remunerated for it.

In addition, further provisions are introduced which clarify and recalibrate the role of ESMA and are therefore to be considered budget neutral. For instance, ESMA already has the obligation to issue opinions in relation to certain aspects of supervision, however the content of those opinions is recalibrated to ensure a higher degree of efficiency in the supervisory process and ESMA is given a formal opportunity to issue an opinion on CCPs' annual review and evaluation as well as on the withdrawal of their authorisation and to take a clear role in coordinating emergency situations. These are tasks that, in all material respects, relate to their already existing ongoing work and the provisions clarify and therefore strengthen ESMA's position, providing clear responsibilities.

Other European Union bodies: Even though smaller changes to the role of other European Union bodies, such as the European Commission or the European Central Bank, are introduced, they will not have budgetary implications.

3.2.1. Summary of estimated impact on operational appropriations

☒ The proposal/initiative does not require the use of operational appropriations

☐ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	

DG: <…….>			Year **N**[50]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the	**TOTAL**

[50] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

							duration of the impact (see point 1.6)			
• Operational appropriations										
Budget line[51]	Commitments	(1a)								
	Payments	(2a)								
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes[52]										
Budget line		(3)								
TOTAL appropriations for DG <…….>	Commitments	=1a +1b +3								
	Payments	=2a +2b +3								

[51] According to the official budget nomenclature.

[52] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING <….> of the multiannual financial framework	Commitments	=4+6								
	Payments	=5+6								

If more than one operational heading is affected by the proposal / initiative, repeat the section above:

• TOTAL operational appropriations (all operational headings)	Commitments	(4)								
	Payments	(5)								
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)	Commitments	=4+6								
	Payments	=5+6								

Heading of multiannual financial framework	**7**	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)	**TOTAL**
DG: <…….>							
• Human resources							
• Other administrative expenditure							
TOTAL DG <…….>	Appropriations						

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)						

EUR million (to three decimal places)

	Year	Year	Year	Year	Enter as many years as	**TOTAL**

		N[53]	N+1	N+2	N+3	necessary to show the duration of the impact (see point 1.6)			
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments								
	Payments								

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
⇩	Type [54]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[55]…																		

[53] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

[54] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[55] As described in point 1.4.2. 'Specific objective(s)…'

- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

3.2.3. Summary of estimated impact on administrative appropriations

☒ The proposal/initiative does not require the use of appropriations of an administrative nature

☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N [56]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 7 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 7 of the multiannual financial framework								

Outside HEADING 7 [57] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 7 of the multiannual financial framework								

[56] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

[57] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

TOTAL								

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.3.1. Estimated requirements of human resources

☒ The proposal/initiative does not require the use of human resources.

☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
20 01 02 01 (Headquarters and Commission's Representation Offices)							
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
• External staff (in Full Time Equivalent unit: FTE)[58]							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
XX 01 xx **yy zz** [59] - at Headquarters							
XX 01 xx **yy zz** [59] - in Delegations							
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
TOTAL							

XX is the policy area or budget title concerned.

[58] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

[59] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

☐ requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

The proposal/initiative:

☒ does not provide for co-financing by third parties

☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[60]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[60] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

☒ The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[61]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

[…]

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[61] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.