

**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Central Bank and the European Economic and Social Committee – A path towards a stronger EU clearing system’**

(COM(2022) 696 final)

**and on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets’**

(COM(2022) 697 final – 2022/0403 (COD))

(2023/C 184/09)

Rapporteur: **Florian MARIN**

Referrals	Council, 31.1.2023 European Parliament, 1.2.2023 European Commission, 8.2.2023
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	2.3.2023
Adopted at plenary	22.3.2023
Plenary session No	577
Outcome of vote (for/against/abstentions)	201/1/3

## 1. Conclusions and recommendations

1.1. The Committee welcomes the proposal for a regulation<sup>(1)</sup> and the Commission’s efforts to ensure the strategic autonomy of our capital markets, increase internal clearing capacity and make the EU clearing system more secure and robust. The Committee believes that it is essential for the financial stability of the EU capital markets to have a competitive and efficient clearing system.

1.2. The EESC suggests that EU-based clearing houses should develop, design and invest in improving their capacity frameworks to encourage market operators to clear their operations in the EU.

1.3. The Committee believes that a comprehensive plan should have been implemented to encourage the transition to EU-based clearing operators immediately after Brexit and is disappointed with the slow decision-making process regarding a EUR 81 trillion derivatives market. The EESC expected a clearer stance on reducing exposure to UK central counterparties (CCPs) and more specific rules and incentives to drive the move towards EU-based CCPs.

1.4. The EESC considers that it is crucial to have specific data about the EU clearing system covering all asset classes and volumes, and believes that more should be done in this regard. The relationship between the data collected and the risk dynamic should be considered on a regular basis in order to have a precise understanding of financial stability risks. The EESC appreciates that alongside financial risk, the risk models must account for the social, governance and environmental risks of CCPs and should be equally important within different risk scenarios and analyses.

<sup>(1)</sup> COM(2022) 697 final.

1.5. The EESC requests a comprehensive evaluation of potential additional costs for the European Securities and Markets Authority (ESMA) and other EU bodies regarding the labour force, IT systems, joint supervisory teams and the proposed Joint Monitoring Mechanism.

1.6. Given the additional powers conferred on ESMA by the 2019 changes to the EMIR Regulation and the current proposal for a regulation, the EESC would like to see a system of checks and balances on ESMA activity. The Committee suggests that ESMA should do more to establish that a significant proportion of the services provided to their EU clients have to be cleared by EU CCPs.

1.7. Regarding intragroup transactions, the Committee appreciates the decision not to exempt entities from countries listed as non-cooperative jurisdictions for tax purposes and those listed as high-risk jurisdictions for anti-money laundering and counter-terrorist financing purposes from clearing obligations and margin requirements.

1.8. The EESC is disappointed that the Commission did not conduct a comprehensive assessment of the existing framework and of how the attractiveness of the EU market has changed in recent years, given that the regulation was last amended over three years ago. The Committee welcomes the introduction of Article 7b and asks ESMA to present a report on the primary reasons for the use of non-EU CCPs one year after the regulation comes into force.

1.9. The Committee suggests that the EU CCPs must be transparent about their fees, margin calls and actions during periods of market stress, in order to improve predictability for all market participants.

1.10. The EESC asks the Commission to explain the specific definition of the term 'urgently' in the suggested modifications to Article 20 and asks the co-legislators to establish which exemptions are considered 'urgent' decisions.

1.11. The EESC supports the proposed modifications to Article 23 regarding the creation of joint oversight teams and the Joint Monitoring Mechanism. The Committee proposes that civil society be involved in the monitoring mechanism established under Article 23c and that the EESC be part of the Joint Monitoring Mechanism as an observer.

1.12. The EESC considers that the five-year deadline for the Commission to review the application of the regulation is too long. It also considers that more should be done to reduce the time required to grant authorisations or to extend activities and services, as well as to build a central database. The EESC asks for more interoperability in the European clearing system, along with a reduced administrative burden and simpler access solutions.

1.13. The Committee endorses the increased transparency offered by the modifications to Article 38, stipulating that clearing members and clients that provide clearing services must inform their clients and potential clients about the margin models and the potential losses or other costs.

## 2. Background

2.1. The Capital Markets Union (CMU), launched in 2015 by the European Commission, is an ambitious long-term project focused on ensuring the free flow of capital in the Union, one of the four fundamental freedoms of the single market. Brexit has brought a sharp decrease in Europe's global role in capital markets, declining from 22 % of global activity before Brexit to just 14 %<sup>(2)</sup>. Thirty years after the single market was launched, twenty years after the euro was introduced and seven years after the CMU initiative was rolled out, the EU still has work to do to create a single capital market.

2.2. The EMIR Refit<sup>(3)</sup> and EMIR 2.2 Regulations<sup>(4)</sup> have provided enhanced transparency as regards third-country CCPs, introducing changes to the clearing mandate and conferring additional powers on ESMA, the EU supervisory authority. This proposal for a regulation grants ESMA even more powers. With clearing capacity an important part of the CMU, the European financial markets are put at risk by overdependence on services provided by third-country CCPs, especially in the United Kingdom (UK). As part of the Brexit agreement, the EU allowed UK clearers to continue to provide services to EU market participants until the end of June 2022. This deadline has been extended by three years due to the threat to financial market stability, with the intention of allowing enough time for the gradual shifting of clearing operations in the EU.

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<sup>(2)</sup> Report — A new vision for EU capital markets.

<sup>(3)</sup> OJ L 141, 28.5.2019, p. 42.

<sup>(4)</sup> OJ L 322, 12.12.2019, p. 1.

2.3. The proposal for a regulation aims to provide further stability, predictability and proportionality for all operators with clearing obligations, and introduces requirements for market participants to declare how reliant they are on third countries for the processing of their derivatives transactions. The proposed amendments also focus on measures to make EU CCPs more attractive and reduce the administrative burden, promote central clearing in the EU by obliging clearing operators to hold an active account in EU CCPs and provide local authorities with the necessary powers to supervise risk related to cross-border transactions.

### 3. General comments

3.1. The EESC has been calling for legislation strengthening the EU capital markets and making it more stable and attractive for a long time<sup>(5)</sup>. Given the recent geopolitical developments (Russia's invasion of Ukraine, increased energy prices, geopolitical tensions in many parts of the globe, and the COVID-19 pandemic) and the immediate effects on the economic environment, the EESC points out that swift action is needed to safeguard and increase the stability of the EU's financial markets. The EESC considers that it is crucial for the financial stability of the EU capital markets to have a competitive and efficient clearing system.

3.2. The Committee welcomes the proposal for a regulation and the Commission's intention to act on ensuring the strategic autonomy of our capital markets, building up our internal clearing capacity and ensuring that the clearing system is safer and more resilient. Strengthening the EU clearing market should take into account the costs generated by the migration of the capital from non-EU clearing markets, the need to protect the risk-based approach and the interdependence between non-EU and EU financial markets.

3.3. The proposal to amend the EMIR Regulation comes after the dramatic increase in energy prices in Europe, mainly caused by Russia's unjustified attack on Ukraine; this has generated instability in the clearing markets, with certain companies unable to provide the collateral on their derivatives contracts. The EESC urges that consolidating the clearing sector in the EU should remain a priority. Price, liquidity, risk, margins, regulation and efficiency should be considered with a view to making the EU clearing system more competitive. The Committee endorses the need to reduce the time required to grant authorisations or to extend activities and services, as well as to build a central database.

3.4. The Committee considers that EU-based CCPs have to devise, design and invest in improving their capacity frameworks in order to persuade market operators to clear their operations in the EU, notably by enhancing their technology and operational capabilities, ensuring better cooperation between market participants and improving risk management practices. In order to improve predictability, CCPs must be transparent about their fees, margin calls and actions during periods of market stress.

3.5. Stable capital markets require a balanced and stable labour market. The EESC appreciates that alongside financial risk, the risk models must account for the social, governance and environmental risks of CCPs, and appreciates that they should be equally important within different risk scenarios and analyses.

3.6. The EESC appreciates the consultation conducted by the Commission at the beginning of 2022, the meetings with the representatives of Member States and the European Parliament, the financial services and economic and financial committees, as well as the bilateral meetings with relevant stakeholders.

3.7. The EESC is disappointed that the deadline for UK-based clearing houses to have unlimited access to EU-based stakeholders was extended by three years, to 30 June 2025. It considers that a thorough plan should have been put in place to incentivise the shift to EU market-based clearing operators immediately after Brexit. The Committee is critical of the past lack of reaction, limited consultation and slow decision-making process regarding a EUR 81 trillion derivatives market.

3.8. European banks benefit from a UK market multi-currency pool, and the shift to European clearing houses would generate a euro-based clearing process, with significant costs for the banking system. Although the EESC supports this shift, and considers that it must be made as soon as possible, it would point out that the right incentives must be provided in order to prevent banks from shifting to other markets. More targeted and adapted incentives should be taken into account to consolidate the clearing sector in the EU.

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<sup>(5)</sup> OJ C 155, 30.4.2021, p. 20,

3.9. Since many EU market operators clear their derivatives transactions in other countries, the EESC was expecting a clearer stance against this trend and more specific rules and incentives triggering a shift towards EU-based CCPs. The Committee would have expected that at least public entities be required to clear in the EU and calls for a clear vision to end this dependence as soon as possible.

3.10. The EESC considers that developing clearing activities in the EU should take into account the entire supply chain, for the benefit of market participants. Market liquidity should be carefully managed when reducing exposure to UK CCPs, alongside a longer-term perspective and standardisation of access requirements for the EU clearing market. Preparing clients for clearing should be taken into account, and various simulations carried out for the benefit of those clients. The Committee also considers that ESMA should carefully adapt measures to small and mid-size market participants.

3.11. The EESC underscores just how important a role third-country CCPs play in the EU's financial stability. It is vital to reduce concentration risks and ensure that relations with these CCPs are based on a transparent, predictable, proportionate and risk-oriented approach. This proposal for a regulation will grant ESMA even more powers and the EESC would like to see a system of checks and balances on ESMA activity in place.

3.12. The EESC suggests that in order to have a clear picture for the purpose of monitoring, it is important to have specific data about the EU clearing system; this data must be comparable and cover all asset classes and volumes. Collecting the right data for an accurate picture of financial stability risks is important, and the synergy between data collected and the risk dynamic should be taken into account on a systematic basis. The EESC considers that more should be done in this regard.

3.13. More synergies between clearing activities and the European Single Access Point should be taken into account. The ESAP promotes data-driven finance and considerably improves access by companies, businesses and financial institutions to data and entities' information, as well as making the economy fit for the digital future, strengthening digital sovereignty, increasing the speed of information flow and setting common standards, with a focus on data, technology and infrastructure<sup>(6)</sup>.

3.14. The EESC endorses the proposal to alleviate the EMIR derivatives rules and to allow bank guarantees and letters of credit to be accepted as high-liquid collateral, as these non-cash alternatives ensure market liquidity and are already used on a large scale in more advanced capital markets, like the US one. The EESC supports the increased role of central banks in protecting EU consumers.

3.15. The EESC supports the changes proposed to Articles 11, 14, 15 and 17 regarding the four-month implementation period for non-financial counterparties that for the first time are required to exchange collateral, and regarding the shorter and less complex procedures for CCPs to expand their products. The Committee welcomes the proposed changes as they will streamline the process of extending activities and services and granting and refusing authorisations. More interoperability is needed in the European clearing system, along with a reduced administrative burden and simpler access solutions.

#### 4. Specific comments

4.1. The EESC does not agree with the European Commission's statement that *'This legislative initiative will have no impact on expenditures for ESMA or other bodies of the European Union'* and considers that costs will increase in areas such as the labour force, IT systems, joint supervisory teams and the proposed Joint Monitoring Mechanism. The Committee observes that, in the proposed amendment to Article 90, the Commission asks ESMA to report on 'the staffing and resources needs'. Therefore, the EESC calls for a thorough assessment of additional costs, calculating and announcing the estimated budgetary implications.

4.2. The EESC acknowledges and endorses the Commission's proposal to introduce the requirement for all market participants subject to clearing obligations to hold an account in EU CCPs. It asks ESMA, after consultation with the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Systemic Risk Board and the European System of Central Banks, to establish a significant proportion of the services provided to their EU clients identified as of substantial systemic importance that have to be cleared at EU CCPs.

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<sup>(6)</sup> OJ C 290, 29.7.2022, p. 58.

4.3. The Committee salutes the intention to ask market participants to report the exact figures and dependence on foreign clearers. The Committee expects ESMA to swiftly develop the technical standards that specify this information, looks forward to a thorough report one year after the entry into force and expects the EMIR Regulation to be amended accordingly.

4.4. Regarding intragroup transactions, the EESC appreciates the non-exemption from clearing obligation and margin requirements for entities from countries listed as non-cooperative jurisdictions for tax purposes and those listed as high-risk jurisdictions for anti-money laundering and counter-terrorist financing purposes. The Committee fully supports the administrative measures relating to these jurisdictions and considers that these entities pose a significant threat to the EU's financial system.

4.5. Although updating digitally means additional budgetary needs, the EESC considers it vital that digital investments are in place to support the proposed updates of the EMIR Regulation. The Committee appreciates the proposal for an advanced IT programme for submitting supervisory documents online, accessible to all relevant authorities.

4.6. The EESC is disappointed that the Commission has not performed a thorough evaluation of the existing framework, given that the regulation was last amended more than three years ago. Furthermore, in order for the current amendments to be fit for purpose, the Committee would have expected a targeted analysis of how the attractiveness of the EU market has changed in the past years, especially related to recent significant geopolitical developments.

4.7. The Committee suggests that the technical standards developed under Article 7 should be transparent and inclusive. The option to introduce changes in order to adapt these standards quickly should also be taken into account. Providing tools for price comparison for execution costs, clearing costs and clearing member costs is important for asset managers.

4.8. The Committee welcomes the introduction of Article 7b which specifies that clearing service providers have to report on the scope of clearing in a non-EU CCP and the obligation to inform their clients about the possibility of clearing a relevant contract in an EU CCP. The Committee asks ESMA to develop a standardised reporting procedure to be used in all Member States, and recommends that a report on the main reasons that non-EU CCPs are used be presented one year after the regulation enters into force. A common approach to fines for market operators should also be carefully managed in order to ensure proportionality in the single market.

4.9. The Committee asks the Commission to clarify the exact meaning of the word 'urgently' in the proposed changes to Article 20, and asks the co-legislators to agree and specify which exemptions fall under the 'urgent' decision.

4.10. The EESC endorses the proposed changes to Article 23 regarding the establishment of joint supervisory teams and the Joint Monitoring Mechanism, but notes that these will have budgetary implications as these authorities will need to take on more staff, including for ESMA. The EESC proposes that civil society be involved in the monitoring mechanism established under Article 23c, especially with regard to future policy decisions.

4.11. A proper evaluation of interconnections, interlinkages and concentration risks under the CCP Supervisory Committee (Article 24a) also requires the involvement of civil society, and the EESC should be part of the Joint Monitoring Mechanism as an observer. The need to reduce the overlapping of responsibilities between the large number of authorities involved in the clearing system should be taken into account. The cooperation between European and national authorities should be efficient and adapted to the dynamics of market risks.

4.12. The five-year deadline for the Commission to carefully review the application of the regulation after its entry into force seems very long, given the period between amendments of the EMIR Regulation. Furthermore, the EESC was expecting the Commission's report on the application of EMIR Refit and EMIR 2.2, as agreed, on 2 January 2023, but the Commission is now proposing to cancel it. The Committee is against that proposal and considers that it might result in the amendments to EMIR not being evaluated at all, given the consequent changes already done to EMIR Regulation.

4.13. Finally, the Committee endorses the increased transparency offered by the proposal to amend Article 38 regarding the obligation of clearing members and clients that provide clearing services to inform their clients and potential clients about the margin models and the potential losses or other costs, should the CCP apply recovery measures. The EESC considers that clearing members should also contribute to improving transparency within the EU clearing system.

Brussels, 22 March 2023.

*The President*  
*of the European Economic and Social Committee*  
Christa SCHWENG

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