



## French AMF's response to the European Commission targeted consultation on the review of the central clearing framework in the EU

April 2022

**On 8 February 2022, the European Commission launched a consultation on the review of the central clearing framework in the EU to which the AMF responded on March 22. Here are the main points upheld by the AMF.**

In the context of the extension of the recognition of UK central counterparties (CCPs) until June 2025, the European Commission intends to adopt measures to improve the competitiveness and attractiveness of EU CCPs aimed at reducing the exposure of EU market participants to UK CCPs' services that have been recognized by ESMA as being of substantial systemic importance for financial stability in the EU. In order to identify potential measures, the European Commission has submitted for consultation a broad fields of reflection and questions around the following main themes:

- the scope of the clearing obligation in terms of actors;
- the scope of the clearing obligation in terms of products;
- the measures applicable to market participants; and
- the supervision of EU CCPs.

The AMF responded publicly to this consultation on March 22, 2022.

The AMF recognizes the need to limit the reliance of EU market players on the substantially systemic services of UK CCPs. However, the AMF considers that some of the options envisaged by the Commission, and in particular measures of a prudential nature, would not be appropriate insofar as they would primarily penalize the competitiveness of EU market players vis-à-vis their third-countries' competitors, as well as the conditions under which they would be able to access the liquidity pools necessary for their activities.

The priority must be to build an alternative clearing offer in Europe, and, as a result, the eventual reduction of EU players' exposure.

Among the options suggested by the Commission, the introduction of an obligation for European clients to clear through EU CCPs should be explored. The AMF is also in favour of making certain public sector entities subject to the clearing obligation. Finally, the AMF supports the approach of enhanced supervision at European level for systemically important EU CCPs.

## **I. SCOPE OF THE CLEARING OBLIGATION IN TERMS OF ACTORS**

### **□ Pension Scheme Arrangements ('PSAs')**

The Commission is notably seeking feedback on potential initiatives which could make it easier for PSAs, currently benefiting from a temporary exemption from the clearing obligation under Article 89 of EMIR, to clear their transactions at EU CCPs.

In this respect, the AMF stresses that the grounds that have justified the exemption are not related to the legislative framework but are essentially related to liquidity (need for cash to pay margins) and operational issues inherent to central clearing.

The AMF also notes that including PSAs in the scope of the clearing obligation will increase the volume of trades coming from EU clients on derivatives and will usefully enrich the pool of liquidity in the EU.

Nevertheless, the AMF sustains the end of the temporary exemption while supporting the extension of the exemption for PSAs until June 2023, in order to allow:

- all concerned PSAs to enter into the necessary clearing arrangements and the market participants to absorb the significant flow that will result from the application of the central clearing obligation to PSAs; and
- the exemption to end simultaneously in the EU and the UK (in case the UK does not extend the exemption currently running until June 2023).

### **□ Public entities**

The consultation includes a number of questions regarding the opportunity to extend the scope of the clearing obligation to public sector entities, which are expressly excluded from the scope of EMIR (or the main provisions of EMIR as the case may be).

Such extension of the scope of entities subject to the clearing obligation would have the merit of (i) the exemplarity of the public sector players that would centrally clear in the Union, (ii) bring diversity among the clearing members/clients of EU CCPs, and (iii) potentially bring additional liquidity to the Union.

Nevertheless, before exploring this option further and considering an amendment to EMIR, the AMF considers that a thorough analysis of the associated costs and benefits should be conducted.

## **II. SCOPE OF THE CLEARING OBLIGATION IN TERMS OF PRODUCTS**

In general, the AMF considers that the current framework for determining which products should be subject to central clearing does not call for substantial changes.

However, some flexibility could be introduced into the procedure for determining which products should be subject to central clearing in order to allow a quick implementation of

minor adjustments, the usefulness of which has been demonstrated, in particular, by the experience acquired in the context of benchmarks' transitions.

### **III. MEASURES APPLICABLE TO MARKET PARTICIPANTS**

#### **□ Prudential measures**

The Commission is interested in hearing the views of stakeholders on several prudential options for EU market players, such as applying a higher risk weight to "excessive" exposures to Tier 2 third-country CCPs, introducing an additional macro-prudential buffer on the same exposures, or imposing exposure limits on Tier 2 third-countries CCPs.

The AMF underlines that imposing prudential constraints on EU credit institutions' exposures to Tier 2 third-country CCPs would go against the policy objective of ensuring the EU's strategic autonomy.

This approach would indeed penalise the competitiveness of EU banks, which could lose their customers, both from third-countries and from the EU (since third-country clearing members that would continue to offer clearing on Tier 2 CCP would not be subject to similar measures), and would increase the cost of access of EU financial entities to significant pools of liquidity that are necessary for their activities (in particular for market making activities). Such an approach would not guarantee the development of a clearing offer within the Union, which is the only way likely to give the Union full strategic autonomy.

Measures involving the setting of quantitative thresholds/exposure limits would be even more problematic given the complexity of defining and calibrating them and their supervision.

Furthermore, imposing prudential requirements on exposures to a CCP benefiting from a recognition decision in the Union ultimately calls into question the principle of this recognition, which is based precisely on the existence of a framework as robust as the one offered by the EU's infrastructures.

#### **□ Mandatory active account**

The Commission has noted market participants' interest in the idea of maintaining an active account with an EU CCP and questions the interest of such measure and its potential modalities for its implementation.

The AMF considers that the concept of mandatory active account is an interesting approach to ensure the EU's capacity in terms of autonomy, in line with the requirements provided for under Articles 48(5) and 48(6) of EMIR related to the designation of a back-up clearing member.

Nevertheless, the AMF is aware of the complexity inherent in the very definition of "active account" and the associated supervision.

Regarding the criteria for defining the "activity" of the account, the use of a transactions' frequency criterion seems more appropriate than quantitative thresholds based on the volume of transactions or positions (particularly complex to define).

#### □ **Obligation to clear in the EU**

The Commission is asking for stakeholders' feedback on whether Article 5 of EMIR should be amended to require from entities subject to the central clearing obligation to clear their transactions via an EU CCP and/or a Tier 1 third-country CCP.

The AMF is against such radical solution that would have many undesired effects for EU market participants, in particular in terms of competitiveness and access to liquidity.

However, the AMF would like to see further consideration given to the potential introduction of an obligation, applicable only to "EU clients", to clear their transactions that are subject to the central clearing obligation under EMIR, through EU or third-country CCP recognized by ESMA and categorized as Tier 1 (and potentially categorized as Tier 2 for services that are not of substantial systemic importance). Such obligation could apply in limited circumstances to:

- « clients » defined as including entities subject to the clearing obligation under EMIR and that are not clearing member for the relevant product in EU CCP or third-country CCP recognized by ESMA in the EU; and/or
- financial entities with respect to their own account activity; and only
- euro-denominated derivatives that are cleared by Tier 2 third-country CCPs and deemed to be of substantial systemic importance, and for which there is a clearing offer in the EU.

Such measure would have the merit of increasing the liquidity in the EU, presenting limited costs for market participants and being easy to define, implement and supervise.

#### **IV. SUPERVISION OF EU CCPS**

The Commission's consultation explores several avenues for the supervision of EU CCPs with a view to making clearing in the EU more attractive.

Regarding the supervision model as such, the AMF supports the approach of enhanced supervision at the European level for systemically important EU CCPs, allowing for joint supervision by ESMA and the national competent authorities. Such a supervision model would ensure real convergence and speed up certain supervisory procedures currently applicable, in the interest of the market.

Find out more:

[European Commission consultation](#)